



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 187

[Docket No. USCG-2018-0160]

RIN 1625-AC28

### Uniform Certificate of Title Act for Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is changing its regulations for certifying a State’s titling system for undocumented vessels to increase States’ participation in the Vessel Identification System (VIS). This final rule allows States that have adopted the recommendations of the model Uniform Certificate of Title Act for Vessels to certify their titling provisions with the Coast Guard. Once certified and participating in the VIS, a State is able to confer preferred mortgage status on financial instruments that apply to undocumented vessels, which benefits the owners of those vessels. While many of the changes to the certification guidelines relate to the technical requirements of recording and maintaining titling documentation, the most significant change implements a system of “branding” (permanently marking) titles for vessels that have sustained structural damage. This will help prevent a process known as “title washing,” where severe vessel damage is concealed by transferring the title to a different State.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0160 in the search box and

click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email W. Vann Burgess, Boating Safety Division, Program Management and Operations Branch (CG-BSX-21), Coast Guard; telephone 202-372-1071, email *william.v.burgess@uscg.mil*.

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**I. Abbreviations**

BLA	Boating Law Administrator
BLS	Bureau of Labor Statistics
BSX	U.S. Coast Guard’s Office of Auxiliary and Boating Safety
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOT	Department of Transportation
FR	<b>Federal Register</b>
HIN	Hull identification number
MOA	Memorandum of Agreements
NASBLA	National Association of State Boating Law Administrators
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
OPM	Office of Personnel Management
RA	Regulatory analysis
§	Section

UCC	Uniform Commercial Code
UCOTA-V	Uniform Certificate of Title Act for Vessels
ULC	Uniform Law Commission
U.S.C.	United States Code
VIS	Vessel Identification System

## **II. Basis and Purpose, and Regulatory History**

The purpose of this rulemaking is to revise Coast Guard guidelines for State vessel titling systems so that they align with the Uniform Certificate of Title Act for Vessels (UCOTA-V). As discussed in more detail below, we expect that aligning Coast Guard guidelines with UCOTA-V will increase States' participation in the Vessel Identification System (VIS), thereby benefitting the owners of undocumented vessels by providing them access to preferred mortgages.

The legal basis for this rulemaking is Title 46 of the United States Code (U.S.C.), Sections 2103, 12501(a), and 31322(d). Section 2103 authorizes the Secretary of the department in which the Coast Guard is operating to issue regulations to carry out the provisions of Subtitle II, Vessels and Seamen, of Title 46 of the U.S.C., in which Section 12501(a) appears. Section 12501(a) requires the Secretary to establish a VIS relating to, among other things, the ownership of vessels titled under the law of a State. Finally, Section 31322(d) allows a mortgage that is filed, or "perfected" under State law, to be deemed "a preferred mortgage" if the Secretary certifies that the State titling system complies with the guidelines set forth in 46 U.S.C. 13107. The Secretary's authority under these statutes has been delegated to the Coast Guard in Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.2, paragraph (II)(92)(a) and (92)(h). Pursuant to that authority, the Coast Guard has promulgated regulations in 33 CFR 187 governing the certification of State laws to determine eligibility for preferred mortgages. Before publishing this final rule we published a notice of proposed rulemaking (NPRM) in the Federal Register (86 FR 52792, Sept. 22, 2021). That NPRM

was entitled “Uniform Certificate of Title Act for Vessels,” and proposed to amend 33 CFR part 187.

### **III. Discussion of Comments**

The Coast Guard received seven comment submissions during the 60-day comment period for our NPRM, which ended November 22, 2021.

Four of the commenters supported the proposal to adopt the UCOTA-V model into the Code of Federal Regulations (CFR) at 33 CFR part 187, subpart D. The Uniform Law Commission (ULC), an organization dedicated to providing States with carefully conceived and nonpartisan uniform laws and the original drafters of UCOTA-V, strongly supports this final rule. The commission commented that the rule is crucial to consumer protection and will facilitate vessel financing, allowing vessel purchasers to obtain loans with lower interest rates. The Boat History Report, a website that helps its clients make informed watercraft purchasing decisions, noted that this final rule will provide greater transparency in the boating industry, promote title branding, and prevent damaged vessels from entering used vessel markets. The Maryland Department of Natural Resources commented that the adoption of this final rule will be the catalyst for reorganizing Maryland’s disparate provisions governing vessel titling into a concise and orderly statute, which will be a notable benefit to the State’s boat owners. Finally, the National Association of State Boating Law Administrators (NASBLA), a nonprofit organization dedicated to developing public policy for recreational boating safety, encourages approval of this final rule. NASBLA indicated that it believes this final rule will provide a consistent consumer protection measure that identifies vessels that have been deemed unsafe, preventing them from being sold without disclosure.

The other three commenters, who represent marine financing institutions, expressed concerns that there may be an inconsistency in granting preferred mortgage status on titled watercraft and the provision of § 187.324 that indicates “the effect of

perfection and non-perfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by State law.”

We do not believe there is any inconsistency. Whether or not a State enacts UCOTA-V, lien priority is determined under the Uniform Commercial Code (UCC) 9-322(a), which has been adopted in some fashion by all 56 States.<sup>1</sup> This final rule will have no impact on the laws governing relative priority of multiple Article 9 security interests, which is currently governed by state law and still will be after the adoption of this final rule.

While there are some maritime liens whose priority status will be reduced by a security interest perfected through UCOTA-V, the Coast Guard sees this as an acceptable consequence. In 46 U.S.C. 12501(a), Congress directed the Secretary for the department in which the Coast Guard is operating to establish a VIS for the purposes of aiding law enforcement and organizing the owners of vessels. The Coast Guard has decided that incentivizing compliance with UCOTA-V through a preferred mortgage status best serves the American people, even if certain maritime lien holders are affected. Furthermore, the affected population had myriad opportunities to comment on the impacts of passing such a rule during the more than 2 years the ULC spent drafting UCOTA-V.<sup>2</sup>

#### **IV. Discussion of the Rule**

For the reasons described above, this final rule revises subpart D of 33 CFR part 187 so that State titling laws modeled on UCOTA-V will meet the certification requirements of subpart D. In addition, the final rule revises the applicable definitions section for part 187 located in subpart C. In subpart D, we replace the entire text of the

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<sup>1</sup> As used throughout this final rule, “State” means any of the 56 jurisdictions (50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that administer Coast Guard-approved recreational vessel numbering systems.

<sup>2</sup> An archive of the activities and deliberations of the ULC committee on UCOTA-V, including transcripts of all meetings, can be found at <https://www.uniformlaws.org/viewdocument/committee-archive-1?CommunityKey=61fb3255-092e-4e91-982b-6fa1ae66fd82&tab=librarydocuments>.

existing subpart with new guidelines to accommodate States that adopt variants of the model code appropriate for their State commercial legal regimes. We are not adopting UCOTA-V in its entirety because some sections of UCOTA-V are not applicable to the Federal Government.

For example, included in UCOTA-V is a “savings clause” provision (see section 28 of UCOTA-V). Because the execution of the savings clause is governed by State law applicable to vessel titling that existed prior to the adoption of UCOTA-V,<sup>3</sup> there is no Federal interest or need to apply Federal oversight of the application of a savings clause. So long as vessels have been properly registered through the State, the savings clause provision found in section 28 of UCOTA-V has no bearing on the Coast Guard’s regulatory regime. Therefore, we are not including UCOTA-V’s savings clause provision within this final rule.

Instead, we are adopting certification guidelines that incorporate UCOTA-V, but with a number of policy or stylistic changes so that the guidelines are flexible enough to allow for the variations in State law permitted by UCOTA-V.

In addition to the savings clause provision in section 28, the Coast Guard is omitting the following sections of UCOTA-V that do not bear specifically on titling concerns. Because the execution of the savings clause would be governed by State law applicable to vessel titling that existed prior to the adoption of UCOTA-V, there is no Federal interest or need to apply Federal oversight of the application of a savings clause.

*Section 1, Short title.* We are integrating the requirements of UCOTA-V into Coast Guard regulations, so we do not need to adopt the act’s title.

*Section 4, Supplemental principles of law and equity.* This provision concerns the interpretation principles of UCOTA-V and, while this is a general principle of the UCC,

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<sup>3</sup> See the explanation contained in the table on page 57 of UCOTA-V which says: “*States will decide under existing state law how they will treat vessels that were previously titled under state law prior to adoption of UCOTA-V.*” Thus, previously existing State requirements do not bear on the titling issues that this final rule addresses.

it is not needed for Coast Guard certification of a State's titling law.

*Section 8, Creation and cancellation of certificate of title, subsection (f).* We are not incorporating subsection (f) of section 8 because it is an optional provision for any State that "provides a procedure for the office to follow before canceling a certificate of title. It is intended for those states whose public records or other law does not already provide a procedure that ensures all interested parties are notified in advance and given an opportunity to be heard."<sup>4</sup>

*Section 26, Uniformity of application and construction.* This provision also concerns interpretation principles and is not needed for Coast Guard certification.

*Section 27, Relation to electronic signatures in global and national commerce act.* This section describes the relation of a State's law to certain Federal statutes concerning electronic signature, which is not relevant in the certification of State titling law.

*Section 28, Savings clause.* For the reasons discussed earlier in this section, the Coast Guard is not incorporating section 28.

We are making a variety of stylistic changes and adding new definitions to clarify maritime nomenclatures. First, we keep the general numbering scheme of the text of UCOTA-V in regulatory text, replacing references to "Section X" with the appropriate citation to the equivalent regulatory section or paragraph. We also replace certain words such as "shall" with "must," as provided by the Federal Plain Language Guidelines.<sup>5</sup> Additionally, we replace references to "the UCC" or specific sections of the UCC with references to "State law."

We provide a section-by-section discussion of the certification guidelines below.

*Section 187.7, What are the definitions of terms used in this part?* We rename

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<sup>4</sup> UCOTA-V, Section 8, Legislative Note, page 25.

<sup>5</sup> See Federal Plain Language Guidelines, Rev. 1, (May 2011) on p. 25. These can be accessed at <https://www.plainlanguage.gov/guidelines>.

this section *Definitions*. We use most of the existing definitions within section 187.7 and add new definitions from section 2 of UCOTA-V. If a definition from UCOTA-V differs from an existing regulatory definition (for example, the term “documented vessel” in UCOTA-V differs from the current definition in § 187.7), we have revised the regulations using the definition from UCOTA-V.

The definitions from UCOTA-V that we are adding are as follows:

- Barge;
- Builder’s certificate;
- Buyer;
- Cancel;
- Certificate of title;
- Electronic;
- Electronic certificate of title;
- Foreign-documented vessel;
- Good faith;
- Hull damaged;
- Lien creditor;
- Office;
- Owner of record;
- Purchase;
- Purchaser;
- Record;
- Secured party of record;
- Sign;



- State of principal operation;<sup>6</sup>
- Title brand;
- Transfer of ownership;
- Vessel number; and
- Written certificate of title.

*Subpart D heading and section titles.* For clarification, we revise the heading for subpart D from *Guidelines for State Vessel Titling Systems* to the more general *State Vessel Titling Systems*. We also change the section titles in revised subpart D to better align with the section titles of UCOTA-V.

*Section 187.301.* We clarify this section by replacing the language that says the Coast Guard “may certify” a State vessel titling system if it complies with the requirements of the subpart with “will certify.” We made this change because, if the State’s titling system meets the requirements of this regulation, the State has met the Coast Guard’s requirements. Thus, the Coast Guard will certify the State’s titling system, thereby fulfilling the requirements set forth in 46 U.S.C. 31322(d)(1) for preferred mortgage status. The purpose of this regulation is for States to take advantage of sharing validated vessel information that meets the minimum requirements listed in regulations.

*Section 187.302 (new).* We move the list of terms States must define from § 187.303 to this new section to keep the structure consistent with the rest of UCOTA-V. The new § 187.302(a) incorporates the current requirement of § 187.303 that States define listed terms substantially as they are defined in § 187.7. The terms already listed in § 187.7 are not removed or substantively changed, but some definitions are rephrased and several new terms are added as recommended by UCOTA-V, section 2(a), which includes a list of definitions for States to adopt directly. In addition, the new § 187.302(b) requires States to define the terms listed in UCOTA-V section 2(b). These

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<sup>6</sup> In UCOTA-V, this term is “State of principle [*sic*] use.”

are general terms derived from the UCC, which all States have adopted or adopted in modified form. Finally, we add a new § 187.302(c), incorporating UCOTA-V section 2(c), stating that subpart D definitions do not apply to any State or Federal law governing licensing, numbering, or registration if the same term is used in that law.

*Section 187.303.* We revise § 187.303 to incorporate UCOTA-V section 3 applicability provisions. As described above, the current list of terms States must define is moved to the new § 187.302.

*Section 187.304.* We retain this section without change, but rename it to better match the rest of the subpart.

*Section 187.305.* This section currently specifies requirements for title applications. We move the material on this topic to the revised § 187.307. The revised § 187.305 incorporates UCOTA-V section 5, defining which State's law governs vessels covered by title certificates.

*Section 187.306 (new).* This new section incorporates the UCOTA-V section 6 discussion of when a title certificate is and is not required.

*Section 187.307.* The revised § 187.307 incorporates UCOTA-V section 7 specifications for title application contents. This rule removes this section's mandate that States must impose certain conditions on vessel dealers and manufacturers. We will no longer require these dealer- or manufacturer-specific conditions because they are covered by the UCOTA-V provisions that we adopt in this rule.

*Section 187.308 (new).* This new section incorporates the UCOTA-V section 8 provisions for creating and canceling title certificates, with the exception of optional paragraph (f), as detailed above in the discussion of UCOTA-V section 8.

*Section 187.309.* This rule revises § 187.309 to exchange the current contents of this section, which govern requirements for voluntary title transfers (transfers other than by operation of law), with those of § 187.317. While we are retaining without change the

existing content of this section, this exchange will make the organization of provisions within the CFR better align with the structure of UCOTA-V.

*Section 187.310 (new).* This new section incorporates UCOTA-V section 10 title brand provisions. We incorporate these provisions to deter title washing and protect buyers and others acquiring an interest in an undocumented vessel.

*Section 187.311.* This section currently requires new title certificates after vessel ownership transfers by operation of law. We move this discussion to the new § 187.320. The revised § 187.311 incorporates UCOTA-V section 11 requirements for maintenance of and access to State title certificate files.

*Section 187.312 (new).* This new section incorporates UCOTA-V section 12, concerning the duties of the State and title holder upon creation of a title certificate.

*Section 187.313.* This section currently requires a State to honor evidence of vessel ownership from another State, country, or the Coast Guard. We are moving this discussion to § 187.328. The revised § 187.313 incorporates UCOTA-V section 13, declaring the *prima facie* evidential value of title certificate contents.

*Section 187.314 (new).* This new section incorporates UCOTA-V section 14, concerning the possession of a title certificate and judicial process against a certificate.

*Section 187.315.* This section currently provides that a State title is invalidated when exchanged for a certificate of documentation. The revised § 187.315 incorporates UCOTA-V section 15 provisions for perfecting vessel security interests, which are currently addressed in § 187.323. The revised § 187.315 also includes the abbreviation for a hull identification number (HIN) in an effort to make the meaning of the section clearer to the regulated public.

*Section 187.316 (new).* This new section incorporates UCOTA-V section 16, concerning the termination of a security interest in a vessel. Currently, § 187.327 requires States to establish their own termination procedures. We are removing §

187.327.

*Section 187.317.* To better align with UCOTA-V's structure, we exchange the provisions on the topics covered by § 187.309 with the topics covered by § 187.317, as discussed above at *Section 187.309*.

*Section 187.318 (new).* This new section incorporates UCOTA-V section 18, concerning the effect of missing or incorrect title certificate information.

*Section 187.319.* This section currently covers applying for replacement or “redundant” title certificates. We move this topic to the new § 187.322. The revised § 187.319 incorporates UCOTA-V section 19, concerning the transfer of a vessel ownership interest by a secured party's transfer statement.

*Section 187.320 (new).* This new section incorporates UCOTA-V section 20, concerning ownership interest transfers by operation of law, which § 187.311 currently contains.

*Section 187.321.* This section currently requires a HIN to be assigned and affixed to a vessel upon proof of its ownership. We replace the existing language with a substantively identical adaptation of UCOTA-V section 21, concerning applications for transferring ownership or for canceling a security interest that is not accompanied by a certificate of title. UCOTA-V recommends more specific requirements for recording HINs, which we include in revised §§ 187.307, 187.309, 187.311, 187.315, and 187.325. For example, UCOTA-V requires the State to issue a HIN in cases where the State did not issue one to the vessel owner or operator upon original construction, such as an antique vessel built prior to November 1972.

*Section 187.322 (new).* This new section incorporates UCOTA-V section 22, concerning replacement title certificates, which is currently addressed in § 187.319.

*Section 187.323.* This section currently specifies procedures for perfecting vessel security interests, which will be addressed in § 187.315. The revised § 187.323

incorporates UCOTA-V section 23, concerning the rights of a vessel purchaser who is not a secured party.

*Section 187.324 (new).* This new section incorporates UCOTA-V section 24, concerning the rights of secured parties.

*Section 187.325.* This section currently requires States to specify the procedure for assigning vessel security interests, which this final rule addresses by revising § 187.315(f). The revised § 187.325 incorporates UCOTA-V section 25, specifying certain requirements for the administrative operation of a State certifying authority, such as length of record retention and allowable fees.

*Section 187.327.* This final rule removes this section, which covered the discharge of a vessel security interest. This topic is now covered in § 187.316.

*Sections 187.329.* This final rule removes this section. It is not necessary to retain the requirement in § 187.329 for States to specify titling system forms, as UCOTA-V requirements for specific records will appear throughout revised subpart D. An example of this is in the title application and certificate provisions of §§ 187.306 through 187.310.

*Section 187.331.* This final rule removes this section. Section 187.331 required States to retain title system information and make it available to Government authorities. In the revised subpart D, similar requirements appear in §§ 187.311(d) and 187.325(a).

## **V. Regulatory Analyses**

The Coast Guard received seven comment submissions during the 60-day comment period that ended on November 22, 2021. We received no public comments on the estimated benefits and costs; therefore, the methodology employed in the regulatory analyses remains unchanged.

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or

Executive orders.

*A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A regulatory analysis (RA) follows.

This final rule has several goals. The Coast Guard intends to establish minimum requirements for States<sup>7</sup> electing to become subpart D-compliant and to prescribe guidelines for State vessel titling systems. We also intend to provide guidance on how to obtain certification of compliance with State guidelines for vessel titling systems for the purpose of conferring preferred status on mortgages, instruments, or agreements under 46 U.S.C. 31322(d).

This RA provides an evaluation of the economic impacts associated with this final rule. Table 1 provides a summary of the final rule's costs and benefits.

**Table 1. Summary of the Final Rule's Impacts<sup>1</sup>**

Category	Summary
Affected Population	56 States of which 18 are not currently in compliance with VIS requirements and 47 have not adopted UCOTA-V (subpart D) or started the process.
Costs (7-percent discount rate)	\$138,490 (10-year discounted cost) \$19,718 (annualized cost)

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<sup>7</sup> As used throughout this final rule, "State" means any of the 56 jurisdictions (50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that administer Coast Guard-approved recreational vessel numbering systems.

Unquantified Costs <sup>2</sup>	<ul style="list-style-type: none"> <li>• 2 States currently have legislative conflicts that may impact VIS participation. While the cost to negotiate and amend the legislation is estimated, the cost of labor to put forward and vote on the privacy legislation is difficult to quantify.</li> <li>• 47 States currently have legislative conflicts that may impact adopting UCOTA-V. While the cost to negotiate and amend the legislation is estimated, the cost of labor to put forward and vote on the privacy legislation is difficult to quantify.</li> </ul>
Potential Costs <sup>3</sup>	<ul style="list-style-type: none"> <li>• Costs to vessel owners, imposed by States without titling programs (7 States), who require vessel owners to obtain a title. Estimated potential cost of obtaining title is \$50 (<i>not in cost analysis</i>).</li> <li>• Costs to vessel owners, imposed by States without titling programs (7 States), who may experience opportunity costs for labor expended to obtain a title (<i>not in cost analysis</i>).</li> <li>• Costs to vessel owners, imposed by States with titling programs (47 States), who may impose additional costs or fees on vessel owners (<i>not in cost analysis</i>).</li> <li>• Cost to States to update website after reviewing rule (<i>not in cost analysis</i>).</li> <li>• Cost to States seeking to become VIS-compliant to transfer data to the Coast Guard (<i>included in cost analysis</i>).</li> </ul>
Unquantified Benefits	<ul style="list-style-type: none"> <li>• Ability to obtain preferred mortgage status.</li> <li>• Lower transaction costs.</li> <li>• Deterrence to “title washing.”</li> <li>• Recovery of stolen vessels.</li> <li>• Identification of abandoned vessels.</li> <li>• Consumer protection.</li> <li>• Security measures for financial entities</li> <li>• Lower administrative burden and costs to buyers.</li> </ul>

<sup>1</sup> Figures are rounded to the nearest one dollar.

<sup>2</sup> Unquantified costs are defined as costs that are incurred as a direct or indirect result of the rulemaking, which are not quantified.

<sup>3</sup> Potential costs are defined as costs that may *potentially* be incurred as a direct or indirect result of the rulemaking.

The revisions will affect States that voluntarily seek to certify their State titling laws with the Coast Guard, pursuant to regulations under 33 CFR part 187, and to participate in the VIS. As such, the affected population for this final rule includes the 56 U.S. States.

The Coast Guard has been encouraging States to participate in the VIS since it has been in place in 2007, but some States have chosen not to participate, primarily because of privacy laws regarding the sharing of personally identifiable information. The VIS comprises a nationwide information system for identifying recreational, commercial, and public vessels that are numbered. As of January 21, 2020, 38 States were participating in

the VIS.<sup>8</sup> To encourage further participation, participating States have access to all VIS data.

As described later, the benefits of this final rule include increased uniformity across States in their titling laws. In turn, this will lead to reduced transaction costs, increased fraud prevention (insurance fraud and fraud from illegitimately owned vessels), increased consumer protection, decreased risk to lenders, improved opportunities for the recovery and identification of abandoned vessels, and increased efficiencies for interstate commerce. Even though there is no new requirement in this final rule for vessel owners to report vessel damage to the VIS directly, the insurance company will be required to provide the information to the State if the owners make claims to repair the vessels. Once the States provide the vessel information to the VIS, the system can track the vessel information and share with other States if the repaired boats are sold as boats with no damage outside the State.

More specifically, transaction costs will be lower because consumers may be able to get preferred loans with lower interest rates. Also, a buyer's administrative burden and costs when buying a vessel from a private party may be lessened because the buyer will not have to do extensive research to assure the vessel is being sold by the legitimate owner. In addition, some non-titling States require bonds when vessels are sold; this transaction cost may be eliminated with the adoption of UCOTA-V.

### **Affected Population**

This final rule potentially affects all 56 States. The affected population of the regulated public may be parsed by VIS participation and also by UCOTA-V adoption.

As of January 21, 2020, 38 States were participating in the VIS,<sup>9</sup> 16 States were interested in joining the VIS but had not signed Memorandum of Agreements (MOA) for

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<sup>8</sup> <https://cgmix.uscg.mil/VISInformation.aspx?VISOption>. This page was last viewed on January 22, 2020. On that date, the last update was January 21, 2020.

<sup>9</sup> VIS participation is defined by the existence of a signed MOA.



VIS participation, and 2 States were not able to comply with VIS requirements due to conflicts with their own State's privacy laws. Regarding UCOTA-V adoption, 47 of 56 States have not adopted UCOTA-V.<sup>10</sup>

### **Costs**

This final rule results in costs to the regulated public (State and territorial governments) and to the Coast Guard. Costs to the States may be divided between VIS compliance costs and UCOTA-V adoption (final subpart D compliance) costs. The final rule does not impose direct costs on vessel owners, as it will deter fraud by introducing penalties for providing false information. However, there is potential for indirect costs, as noted later.

Vessel owners are not required to take action as a result of this final rule. For example, this final rule does not require additional documentation from vessel owners. Transfer of title always requires a new title to be issued, which is common practice. There is no requirement other than a statement from the current owner declaring the vessel is, or has been, damaged. There is no other documentation required for proof of damage. There is no requirement for a statement from an insurer. This merely provides disclosure to a buyer.

This final rule may lead to changes in titling practices in some States, which may have cost implications for vessel owners and the States. We describe the potential costs to vessel owners as a direct or indirect result of this final rule below.

### ***Potential Costs to Vessel Owners***

This final rule will affect 56 States, all of which have vessel owners. In States that currently have a titling program for vessels and that participate in the VIS, vessel owners will experience no incremental impact. In States with an existing titling program,

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<sup>10</sup> The five States that have adopted UCOTA-V are Connecticut, the District of Columbia, Florida, Hawaii, and Virginia. The four States in the process of adopting UCOTA-V are Alabama, Georgia, Tennessee, and Texas. This data is current as of January 21, 2020.

vessel owners may be affected if the State changes or imposes additional fees through its legislative or regulatory process. States that are compliant with UCOTA-V (final subpart D) report that they did not impose any additional fees after the adoption of UCOTA-V provisions, and, according to the Coast Guard's Office of Auxiliary and Boating Safety (BSX), no State has signaled the intent to increase titling fees if their system becomes certified as UCOTA-V compliant. However, the Coast Guard cannot definitively conclude that recreational vessel owners will not face a cost increase as an indirect effect of these final changes. Nonetheless, we have not computed a cost for the requirement to vessel owners in States with a titling system, due to the uncertainty of a potential cost increase.<sup>11</sup>

In States without a vessel titling program, recreational vessel owners may experience a cost increase because of this final rule. These States have not indicated to the Coast Guard how they may handle existing vessels once they have established a titling system. Existing vessels may be grandfathered in and permitted to be titled voluntarily by the owner, or States may require all vessel owners to obtain a title. A review of websites for States with a titling program demonstrated that the cost of vessel titles are generally \$50 or less.<sup>12</sup> Because the Coast Guard does not have information on how future titling programs may be operated, we have not computed the potential costs to obtain titles in these States as a cost in this rulemaking. We acknowledge that there may be some opportunity costs<sup>13</sup> for labor expended to obtain the title and actual fees for the

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<sup>11</sup> According to BSX, recreational vehicle owners for the 10 compliant and semi-compliant States did not incur a cost increase.

<sup>12</sup> This statement is based on the Coast Guard's review of website information for 52 States (March 2020). For Virginia state fees, see <https://dwr.virginia.gov/boating/registration/procedure/>. For Florida state fees, see <https://www.flhsmv.gov/motor-vehicles-tags-titles/vessels/vessel-titling-registrations/>.

<sup>13</sup> The use of leisure time to obtain the title. The cost of this task may be calculated by the formula: one-half of the median household income. The Coast Guard followed the Department of Transportation's (DOT) guidance for valuing the opportunity cost of leisure time. Readers should consult the DOT Memorandum "Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis," which may be found at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>.

title.

No further action will be required by vessel owners. Vessel owners do not need to renumber their vessels as a result of this final rule, since existing hull numbers are unrelated to titling. No equipment is required by vessel owners for compliance. Table 2 below summarizes this section detailing potential costs of this final rule. All are considered indirect costs, as they are costs that may be imposed by the State on vessel owners as a result of this final rule, but not mandated by the rule itself. There are other potential costs of the rule detailed in future section. For a comprehensive list of all potential costs, please refer to table 1.

**Table 2. Summary of Potential Costs**

<b>Task</b>	<b>Description</b>	<b>Party Bearing Cost</b>	<b>Potential Direct or Indirect Cost of Final Rule</b>
Obtaining a vessel title (cost of title).	Costs to vessel owners, imposed by States without titling programs (7 States), that require vessel owners to obtain a title. Potential cost of obtaining title is \$50.	Vessel owners in 7 States.	Potential indirect cost of final rulemaking.
Obtaining a vessel title (opportunity cost of obtaining title).	Costs to vessel owners, imposed by States without titling programs (7 States), who may experience opportunity costs for labor expended to obtain a title.	Vessel owners in 7 States.	Potential indirect cost of final rulemaking.
N/A	Costs to vessel owners, imposed by States with titling programs (47 States) that may impose additional costs or fees on vessel owners.	Vessel owners in 47 States.	Potential indirect cost of final rulemaking.

### ***Costs to the Coast Guard***

We estimate that the Government costs associated with this regulatory action will be labor costs for the Coast Guard to (1) process MOAs from the States; (2) coordinate with States; and (3) update the Coast Guard website. No additional equipment is needed

to perform these tasks under this final rule.

In order to process an MOA, it is first transmitted from a State to a Coast Guard compliance officer in BSX and then to the Commandant (or designee) for approval. A Coast Guard compliance officer will engage and coordinate with and respond to inquiries from the States. We estimate that a Coast Guard compliance officer spends 0.25 hour to process an MOA from a State and another 0.25 hour to transmit it to the Commandant (or designee) for approval. The Commandant or designee spends 0.2 hour to approve an MOA (Cost = Count of MOAs  $\times$  [(0.5 hour  $\times$  Compliance officer's wage rate) + (0.2 hour  $\times$  Commandant's wage rate)]).

As a result of this final rule, we estimate that the Coast Guard will need to engage and coordinate with, and respond to inquiries from, States regarding VIS participation and UCOTA-V compliance. Eighteen States are not in the VIS. We estimate that a Coast Guard compliance officer will need to coordinate with each of these States for VIS participation.<sup>14</sup> To engage with and respond to inquiries from States, we estimate that the compliance officer will spend 0.5 hour per State's inquiry to coordinate a response (Cost = 18 States  $\times$  (0.5 hour  $\times$  Compliance officer's wage rate)). For the 47 States needing to adopt UCOTA-V, we estimate that a Coast Guard compliance officer will spend 0.5 hour per State to assist (Cost = 47 States  $\times$  (0.5 hour  $\times$  Compliance officer's wage rate)).

Lastly, the Coast Guard will need to update its website with information on this final rule. We estimate that 1 hour will be needed by a computer technician and an additional 0.25 hour for a compliance officer to supervise and approve the update. This is a one-time task that is expected to occur in the first year of this final rule's enactment. (Cost = [(0.25 hour  $\times$  Coast Guard compliance officer's wage rate) + (1 hour  $\times$  Federal computer technician's wage rate)]).

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<sup>14</sup> Readers may consult Coast Guard data at <https://cgmix.uscg.mil/VISInformation.aspx>. This webpage was last viewed on January 21, 2020. Sixteen States have initiated VIS participation, but have not completed an MOA. Two States do not participate.

**Table 3. Summary of Costs to the Coast Guard**

<b>Task</b>	<b>Time Burden and Responsible Party</b>	<b>Cost</b>	<b>Applicable Population</b>	<b>Direct or Indirect Cost of Final Rule</b>
Process MOA from States.	<p>0.25 hours to process MOA <i>(Coast Guard Compliance officer)</i></p> <p>0.25 hours to transmit for approval <i>(Coast Guard Compliance officer)</i></p> <p>0.2 hours for approval <i>(Commandant or designee)</i></p>	$(0.5 \text{ hours} \times \text{Coast Guard Compliance officer's wage rate}) + (0.2 \text{ hour} \times \text{Commandant or designee's wage rate}) \times 56 \text{ States}$	One-time cost to the Coast Guard for all 56 States	Direct
Coordinate with States.	<p>0.5 hours for 18 States without VIS <i>(Coast Guard Compliance officer)</i></p> <p>0.5 hours for 47 States needing to adopt UCOTA-V <i>(Coast Guard Compliance officer)</i></p>	$18 \text{ States} \times (0.5 \text{ hour} \times \text{Coast Guard Compliance officer's wage rate})$  $47 \text{ States} \times (0.5 \text{ hour} \times \text{Coast Guard Compliance officer's wage rate})$	<p>One-time cost to the Coast Guard for 18 States</p> <p>One-time cost to the Coast Guard for 47 States</p>	Direct
Update Coast Guard Website.	<p>1 hour to update <i>(Federal computer technician)</i></p> <p>0.25 hours to approve <i>(Coast Guard Compliance officer)</i></p>	$0.25 \text{ hour} \times \text{Coast Guard compliance officer's wage rate} + (1 \text{ hour} \times \text{Federal computer technician's wage rate})$	One-time cost to the Coast Guard	Direct

Compliance with this final rule will require a variety of tasks by the regulated public. This section documents the Coast Guard's assessment of this final rule's changes and the steps States need to take as a result. Not all tasks need to be carried out by all the States. In this section, we note first the tasks that apply to all States. Next are the tasks that result from this final rule. We split these tasks into categories to better calculate the costs, since some tasks apply to some States and others apply to other States, depending on their current level of compliance with existing rules.

Below is a list of all costs to the regulated public:

***Costs to the Regulated Public – States***

All 56 States need to be familiarized with this final rule and to complete the task of reviewing their State's website for numbering and titling of vessels. Upon review of the State's procedures and websites, some States may need to make updates. These are discussed in more detail below.

The Coast Guard estimates that States will spend 0.5 hour to become familiarized with this final rule.<sup>15</sup> A manager typically will perform this task. A manager will spend another 0.5 hour to review the State's procedures and website to make a determination whether anything will need to change in response to this final rule (Cost = 56 States × 0.5 hour × State manager's wage rate). All 56 States may potentially need to update their websites, which would be accomplished by a computer technician. The Coast Guard estimates that this task will take 1 hour and be performed by a computer technician at the direction of a manager.<sup>16</sup> However, as the Coast Guard does not have an estimate on how

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<sup>15</sup> This estimate is based on a previous Coast Guard rulemaking. In the 2014 final rule for Personal Flotation Devices Labeling and Standards (79 FR 56491, October 22, 2014), the Coast Guard estimated that the task will take 0.5 hour (<https://www.federalregister.gov/documents/2014/09/22/2014-22373/personal-flotation-devices-labeling-and-standards>). Time estimate can be found under Table 2, "State Regulatory Review." No public comments were received on this estimate. This page was last viewed on May 21, 2021.

<sup>16</sup> The Coast Guard estimates a manager will spend 0.25 hour to provide direction and supervise and approve the work of a computer technician.

many States will need to update a website, the cost is considered only a potential cost and is not factored into the cost analysis.

Although not explicitly required, some States may send email notifications or a press release to interested parties (such as the media, recreational boaters, boating associations, the Coast Guard Auxiliary, etc.). Another 0.5 hour is estimated for a State manager to write a notification of regulatory change for the public.<sup>17</sup> We estimate these as one-time costs to the State.

**Table 4. Summary of Costs to States**

<b>Task</b>	<b>Time Burden and Responsible Party</b>	<b>Cost</b>	<b>Applicable Population</b>	<b>Direct or Indirect Cost of Final Rule</b>
Become familiarized with rule.	0.5 hours State manager	Cost = (56 States × 0.5 hour × State manager's wage rate) + (56 States × 0.5 hour × State manager's wage rate)	One-time cost to all 56 States	Direct
Review website.	0.5 hours State manager			Direct
Update website ( <i>not included in cost analysis</i> ).	1 hour Computer technician	Cost = 1 hour × 56 States × Computer Technician's wage rate	Potential one-time cost to all 56 States	Potential direct cost
Notification of change.	0.5 hours State manager	Cost = 0.5 hour × 56 States × State manager's wage rate	One-time cost to all 56 States	Direct

### ***Costs to the Regulated Public – States (VIS Compliance Costs)***

Based on BSX data,<sup>18</sup> we estimate that there are two States currently not in compliance with any existing VIS requirements. Some States are in partial compliance

<sup>17</sup> This estimate is based on the Coast Guard's final rule for Tankers Automatic Pilot Systems (83 FR 55272, November 05, 2018). Please see <https://www.federalregister.gov/documents/2018/11/05/2018-24127/tankers-automatic-pilot-systems>, Table 3, "Write Notification of Regulatory Change," fourth entry (0.5 hours). This estimate is defined as "Communicate regulatory change," which is an identical task undertaken by the State manager. This page was last viewed on May 21, 2021.

<sup>18</sup> <https://cgmix.uscg.mil/VISInformation.aspx>. This webpage was last viewed on January 8, 2020.

with existing requirements for the VIS. Coast Guard data demonstrates that 16 States have initiated VIS participation, but are not in compliance because they do not have a signed MOA with the Coast Guard. The remaining 38 States have signed MOAs, which means they are participating in the VIS.

The 16 States that have initiated VIS activity but do not have a signed MOA with the Coast Guard will need to complete the MOA process. In order to comply, States will incur costs to—

- (1) coordinate with the Coast Guard for data transfer;
- (2) prepare and submit a completed MOA and participation form; and
- (3) engage in coordination activities to complete a new user request form.

All the VIS-participating States will engage in activities to upload data to the VIS. However, according to Info-Link Technologies,<sup>19</sup> the contractor responsible for VIS updates, VIS data uploads for each State are often an automated process, where software automatically prepares and uploads a data file each month. The economic impact of the data submission is zero as Info-Link Technologies already bears the cost for the data, which they receive from every State regardless of their participation in VIS. Thus, States that do not currently participate in VIS still engage in a virtual data submission with the contractor and will not incur an additional cost or time burden. As a result, we conclude that VIS data uploads will not produce costs to States new to VIS.

New VIS participants need to complete the new user request form. We estimate that it takes 0.1 hour to complete the form. These estimates are based on data provided by Info-Link Technologies and the Coast Guard's Collection of Information entitled "Vessel Identification System," OMB Control Number: 1625-0070.<sup>20</sup>

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<sup>19</sup> Email from Info-Link Technologies, Inc. to William Burgess, Compliance Officer, CG-BSX-1 dated February 5, 2020 (available in the docket where indicated under the ADDRESSES portion of this final rule).

<sup>20</sup> During the renewal process for the collection of information request, no public comments were received on the estimate. In preparing this final rule, the Coast Guard reviewed data and revised the estimate for the



Lastly, two States will have to address legislative conflicts with existing privacy laws that complicate or prevent VIS participation. We estimate that such a task will require that a manager negotiate the changes with a State legislative committee. An attorney will draft the legislation. Unlike UCOTA-V, which has uniform legislation to follow for each State, privacy law amendments may take more time to develop. We estimate that a manager will spend 40 hours to negotiate legislative changes to privacy laws, and an attorney will spend another 40 hours to draft this legislative language. However, State laws are often voted in blocks and the labor to put the amended privacy legislation forward and to vote on it is unseverable. For that reason, we have not estimated a cost for either step.

We computed a cost to transmit VIS data to the Coast Guard for 18 States on the basis that States may correspond with the Coast Guard to initiate the data transfer or may have issues in their computer systems preventing automatic data transfer. In the event that this occurs, the State may send spreadsheets to the Coast Guard, and a technician contracted to the Coast Guard will upload the data. However, we acknowledge that this is already a task under existing regulations and, in most cases, data is automatically transmitted.

**Table 5. Summary of Costs (VIS Compliance)**

<b>Task</b>	<b>Time Burden and Responsible Party</b>	<b>Cost</b>	<b>Applicable Population</b>	<b>Direct or Indirect Cost of Final Rule</b>
Prepare and submit an MOA.	16 hours ( <i>State manager</i> )	18 States $\times$ (16 hours $\times$ State Manager wage rate)	One-time cost for 18 States.	Direct
Complete New User request form.	0.1 Hour ( <i>State manager</i> )	18 States $\times$ (0.1 hour $\times$ State Manager wage rate)	One-time cost for 18 States.	Direct
Coordinate with Coast	1 hour ( <i>State</i> )	18 States $\times$ (1 hour $\times$ State Manager	Potential one-time cost for	Direct (Potential)

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duration of labor to upload VIS data. The revision better reflects the amount of time needed to perform periodic uploads of automated data.

Guard for data transfer.	<i>manager)</i>	wage rate)	States with issues with the automatic data transfer. <i>(Even though considered potential, included in cost analysis due to potential correspondence to initiate data transfer or issues with automatic data transfer.)</i>	
Draft legislative language to amend privacy laws.	40 hours <i>(State manager)</i>  40 hours <i>(State attorney)</i>	2 States × [(40 hours × State Manager wage rate) + (40 hours × State attorney wage rate)]	One-time cost for 2 States.	Direct

***Costs to the Regulated Public – States in UCOTA-V Adoption (Final Subpart D Compliance)***

We base our cost estimates on all 56 States choosing to adopt UCOTA-V. As of January 16, 2020, five States have adopted UCOTA-V, and five States are developing legislation to become UCOTA-V-compliant.<sup>21</sup> Many of the remaining States have reported that they are waiting for the Coast Guard to issue a rule on UCOTA-V before going through the legislative process. In addition, States often wait for their neighboring States to adopt legislation that potentially has effects across State borders. Insurers and manufacturers have requested the changes. For these reasons, the Coast Guard estimates that all 56 States will adopt UCOTA-V.

Currently, 47 States have neither adopted UCOTA-V nor initiated legislation to do so. The cost analysis of UCOTA-V adoption focuses solely on these 47 States. In

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<sup>21</sup> Email from the ULC to William Burgess, Compliance Officer, Coast Guard (January 16, 2020) (available in the docket where indicated under the ADDRESSES portion of this final rule).

order to comply with this final rule, States will need to develop legislation and amend their computer systems to comport with UCOTA-V. As noted earlier, all States will post information on their websites about this final rule; that task appears in the *Costs to the Regulated Public – States* section of this analysis.

In order to develop UCOTA-V legislation,<sup>22</sup> a State will require the labor of an attorney<sup>23</sup> to draft the legislation<sup>24</sup> for a State legislative committee to begin the legislative process. The ULC has developed legislative text for UCOTA-V, which each State may use to develop its respective State law. For this reason, the labor requirement for each State is relatively low. We estimate that an attorney will spend approximately 24 hours<sup>25</sup> to draft this legislative language. Given that State laws<sup>26</sup> are often voted in blocks, the labor to put UCOTA-V legislation forward and to vote on it is considered to be unseverable and, for that reason, we have not estimated a further cost on developing legislation.

States adopting UCOTA-V will need to update their procedures and websites to reflect the resulting changes. We estimate that 5 hours will be spent by a State manager to review and edit State procedures, manuals, policy documents, and other information (Cost = (47 States × (5 hours × State manager's wage rate))).<sup>27</sup>

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<sup>22</sup> For all uniform acts, the State's legislative drafting office mainly formats the bill to conform to the State's required format and fill in bracketed areas of the text. The ULC (<https://www.uniformlaws.org/home>) also includes italicized legislative notes when they format the bill for the particular State. This allows the time to draft the bill to be relatively shorter than with other regulations.

<sup>23</sup> Each State has its own legislative drafting agency responsible for drafting legislation. The bill drafters are attorneys who draft bills for all the state legislators.

<sup>24</sup> As this is part of the State's normal legislative process, we do not anticipate any additional fees beyond the normal process for these bills.

<sup>25</sup> This estimate comports with previous estimated durations of making legislative changes at the State level. In the final rule for Personal Flotation Devices Labeling and Standards (79 FR 56491, Sept. 22, 2014), the Coast Guard estimated that a legislative change would take 10 hours. No public comments were received on this estimate. In this final rule, the Coast Guard adjusted this estimate to reflect the more complex nature of this change.

<sup>26</sup> Some States may delegate the approval process of such changes to an administrative law committee rather than vote on it in the legislature. The process to develop the law and put it forward for voting would be the same.

<sup>27</sup> This estimate aligns with other estimated durations of reviewing and editing manuals and policy documents. The Coast Guard reviewed previously approved OMB collections for the final rule for Marine Vapor Control Systems (80 FR 54418, September 10, 2015), the proposed rule for Revision of Crane

The remaining UCOTA-V compliance costs items are—

(1) labor for a manager (30 minutes) to coordinate with the Coast Guard to ensure the State’s program meets UCOTA-V certification requirements (Cost = 47 States × (0.5 hour × State manager’s wage rate));

(2) labor for an administrative assistant (15 minutes) and a manager (45 minutes) to assist with the conversion or update to a subpart D-compliant system (Cost = 47 States x [(0.25 hour × administrative assistant’s wage rate) + (0.75 hour × State manager’s wage rate)]);

(3) labor for a manager (15 minutes) to oversee conversion to a subpart D-compliant system (Cost = 47 States × (0.25 hour × State manager’s wage rate)); and

(4) labor for a software developer (756 minutes) to convert the system to a subpart D compliant system (Cost = 47 States × (12.6 hours × computer technician’s wage rate)).

These tasks and their calculations are shown in table 6.<sup>28</sup>

For the seven States that do not have an existing titling program, the labor tasks for amending State’s computers to comport with UCOTA-V are greater. We estimate that 24 hours will be spent by a computer technician in these States to amend the State’s computers to comport with UCOTA-V, and that a manager will spend another 0.5 hour to review and approve the work.

BSX routinely contacts States regarding their vessel titling systems. There are

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Regulation Standards for Mobile Offshore Drilling Units (MODUs), Offshore Supply Vessels (OSVs), and Floating Outer Continental Shelf (OCS) Facilities (78 FR 27913, May 13, 2013), and the final rule for Personal Flotation Devices Labeling and Standards (79 FR 56491, Sept. 22, 2014). Previously approved collections of information may be found at <https://www.reginfo.gov/public/do/PRAMain>. No public comments were received on these estimates. The Coast Guard adjusted its estimate to reflect changes in complexity of the task.

<sup>28</sup> According to BSX, most States use an “off-the-shelf” system, so changes are easy and menu driven. Some States have older systems that will take more time to adjust, but the older systems are the exception, not the rule. The Coast Guard estimates the average number of hours of labor for a computer technician by using the average time spent on design and coding from a University of South Carolina study on software developers. Readers can find the study at <https://cse.sc.edu/job/how-software-developers-really-spend-their-time>. The study uses the average number of hours per week software developers spend designing and coding software. The Coast Guard considers this to be a reasonable rough proxy for the purpose of this analysis.

currently 45 States titling vessels and 1 State that makes titling optional.<sup>29</sup> Provided that these States become compliant with the recent regulatory changes in the Standard Numbering System, Boating Accident Report Database, and VIS (33 CFR parts 173, 174, 181, and 187) by the required date, any changes made to the current titling systems should be minimal.

Coast Guard personnel attended the National Association of State Boating Law Administrators Workshop held in Lexington, KY from February 23 to 28, 2020. Approximately 40 boating administrators from the States were in attendance, and representatives from 4 States (Wisconsin, Minnesota, Alaska, and South Carolina) indicated they were contemplating adopting UCOTA-V. None of these 4 States have conducted a complete cost analysis, but the initial projected cost ranged from \$0 to about \$8,000.

The primary changes required include the ability to mark a title as “branded,” and to add any numbered vessels that are not currently required to be titled. For example, Virginia adopted UCOTA-V and reprogrammed their system to accept the branded designation. According to the State of Virginia’s Boating Law Administrator (BLA),<sup>30</sup> this was accomplished at no cost to the State.<sup>31</sup>

The remaining 11 States that do not currently title vessels do title vehicles, and their vehicle titling systems could add vessels. As an example, Connecticut (previously a

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<sup>29</sup> Email from NASBLA Vessel Registration, Identification, and Titling Committee to William Burgess, Compliance Officer, Coast Guard, February 10, 2010. Available in the docket where indicated under the ADDRESSES portion of this final rule.

<sup>30</sup> The governor of each State appoints a single agency to be the recipient and administrator of grant funds received from the State Recreational Boating Safety Grant Program, which is authorized under 46 U.S.C. Chapter 131. These State agencies, in turn, appoint a BLA to be the State’s single point of contact for the purposes of administering the grant program. Although duties can vary from State to State, every State has an assigned BLA whose primary function is to administer the recreational boating safety program within the State. The BLA for Virginia is an employee with the Virginia Department of Game and Inland Fisheries.

<sup>31</sup> Conversation at the National Association of State Boating Law Administrators Workshop (circa February 28, 2018 to March 1, 2018) with Mr. Thomas Guess, Boating Law Administrator, Virginia, and William Burgess, Compliance Officer, Coast Guard. According to the Virginia BLA, updates to the system are included as a part of routine information technology maintenance. See also <https://community.nasbla.org/blogs/thomas-guess/2018/08/23/ucotva-in-virginia>. The website is dated August 23, 2018, and was last viewed on February 5, 2020.

non-titling State) adopted UCOTA-V and its Department of Motor Vehicles began issuing titles for vessels.<sup>32</sup> This process is analogous to registering a motor vehicle. In other words, at the time a person buys a car, the owner must register and title the car with the cognizant state. Likewise, a vessel owner will now be able to register and title vessel at the same time and in the same place. Connecticut did not incur any new costs associated with this transition since it used the existing infrastructure, and the change was completed as a part of an information technology update as per the State BLA.<sup>33</sup>

The 10 States that have adopted or have begun adopting the UCOTA-V model have engaged in the tasks noted in this text as costs of compliance. For example, they have already collaborated with the Coast Guard regarding their vessel titling system updates. These States will not incur additional costs because they elected to adopt the UCOTA-V model prior to this regulation. These States will not require the use of a computer technician to upgrade the computer system because the conversion has taken place already. No further action is needed by States in this situation. As noted earlier, these States are already familiar with UCOTA-V and will review their existing procedures as a result of this final rule.

**Table 6. Summary of Costs for Subpart D Compliance**

<b>Task</b>	<b>Time Burden and Responsible Party</b>	<b>Cost</b>	<b>Applicable Population</b>	<b>Direct or Indirect Cost</b>
Draft UCOTA-V legislative language.	2 hours ( <i>State manager</i> )  5 hours ( <i>State attorney</i> )	47 States $\times$ [(2 hours $\times$ State manager wage rate) + (5 hours $\times$ State attorney wage rate)]	One-time cost for 47 States.	Direct
Coordinate with	0.5 hours	47 States $\times$ (0.5	One-time	Direct

<sup>32</sup> No changes will be required to any State's systems to facilitate population of the VIS. Data received from the States for inclusion in the VIS will be handled by the Coast Guard contractor and reformatted as necessary to populate the VIS database. We do not expect States to incur additional costs as the cost is already captured under the existing Coast Guard long-term contract for management and maintenance of the VIS.

<sup>33</sup> Conversation at the National Association of State Boating Law Administrators Workshop (circa February 28, 2018 to March 1, 2018) with Ms. Eleanor Mariani, Boating Law Administrator, Connecticut, and William Burgess, Compliance Officer, Coast Guard.

Coast Guard for compliance and certification.	( <i>State manager</i> )	hour $\times$ State manager wage rate)	cost for 47 States.	
Assist with update and convert to compliant computer system.	0.25 hours ( <i>admin assistant</i> ) 0.75 hours ( <i>State manager</i> )	47 States $\times$ [(0.25 hour $\times$ admin assistant wage rate) + (0.75 hour $\times$ State manager wage rate)]	One-time cost for 47 States.	Direct
Oversee update or conversion to compliant system.	0.25 hours ( <i>State manager</i> )	47 States $\times$ (0.25 hour $\times$ State manager wage rate)	One-time cost for 47 States.	Direct
Update or convert to a compliant system.	12.6 hours ( <i>computer technician</i> )	47 States $\times$ (12.6 hours $\times$ computer technician wage rate)	One-time cost for 47 States.	Direct
Amend State's computers to comport with UCOTA-V. ( <i>Applies to States without an existing titling program.</i> )	2 hours ( <i>computer technician</i> ) 0.25 hours ( <i>State manager</i> )	7 States $\times$ [(2 hours $\times$ computer technician wage rate) + (0.25 hour $\times$ State manager wage rate)]	One-time cost for 7 States.	Direct
Update State procedures or processes.	5 hours ( <i>State manager</i> )	47 States $\times$ (5 hours $\times$ State manager wage rate)	One-time cost for 47 States.	Direct
Post updated procedures on website.	0.25 hours ( <i>State manager</i> ) 1 hour ( <i>computer technician</i> )	24 States $\times$ [(0.25 hour $\times$ State manager wage rate) + (1 hour $\times$ computer technician wage rate)]	One-time cost for 24 States.	Direct

### ***Cost Calculations for the Final Rule***

We discuss the derivation of cost data in the following paragraphs. We estimate the approximate loaded hourly labor rates of State employees as follows: manager (\$94.30); administrative assistant (\$33.81); computer technician (\$67.98); and lawyer (\$124.57). The loaded wage factor is 1.74 for non-managerial State workers and 1.56 for managers at the State level, based on Bureau of Labor Statistics (BLS) data. See table 7 for details.

**Table 7. Loaded Wage Factor Calculation (\$2020)**

<b>Personnel Category</b>	<b>Data Source(s)<sup>1</sup></b>	<b>Total Compensation</b>	<b>Wage &amp; Salaries</b>	<b>Loaded Wage Factor</b>
All Workers, State and Local Government	BLS Employer Costs for Employee Compensation, all workers in State and Local Government	\$51.54	\$29.54	<b>1.74</b>
Managers, State and Local Government	BLS Employer Costs for Employee Compensation, Managers in State and Local Government	\$64.02	\$41.02	<b>1.56</b>
Coast Guard Uniform Positions	2020 Military Active & Reserve Component Pay Tables <sup>2</sup>			

<sup>1</sup> A loaded wage rate is what a company pays per hour to employ a person, including the hourly wage and the cost of benefits (health insurance, vacation, etc.). To calculate the load factor, we used the series IDs CMU3019200000000D (for all workers) and CMU3010000100000D (for managers, professional and related occupations) using the multi-screen database. To repeat this process, visit <https://data.bls.gov/cgi-bin/dsrv?cm> and select “State and local government workers.” Select “Total Compensation” and “Wages and salaries.” Select “All workers” or “Management, professional and related occupations.” Select “Public administration.” Select “All workers.” Select “United States.” Select “Cost of Compensation.” Select “Not seasonally adjusted.” Finally, use values for the fourth quarter of 2020 to calculate the load factor by dividing total compensation by wages and salaries.

<sup>2</sup> <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>. Select table named “2020 Military Active & Reserve Component Pay Tables”. Data was posted on December 30, 2019 and webpage was last updated January 27, 2020. This page was last viewed on January 18, 2022.

For all provisions with costs to the Government, we use publicly available data found on OPM’s website under “Policy, Data, and Oversight” and in the Congressional Budget Office’s report, “Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015.” We estimate labor costs attributed to the Government Coast Guard compliance officers, GS-14 managers, GS-13 computer technicians, and the Commandant. We estimate the fully loaded labor costs for a GS-13 and GS-14 compliance officer at \$71.03 and \$79.48 respectively.<sup>34</sup> We use a weighted average of the wage rates (\$73.14) for calculations. We estimate the wage rate for a GS-14 manager at \$79.48, the wage rate for a GS-13 computer technician at \$71.03, and the wage rate for

<sup>34</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2020/general-schedule/>. Labor costs calculated by 1) finding hourly wage rate for GS-level under “2020 General Schedule (Base)”. Choose Step 5 value. 2) To calculate load factor, we go to <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>. Use tables 2 and 4. Divide the total compensation by the wages for a Federal employee. Multiply by hourly wage rate obtained from OPM. GS-13 falls under “Master’s Degree” and GS-14 falls under “Professional/Doctorate Degree”. For the Master’s Degree we end up with a benefits to wage ratio, using this method, of \$74.80 / \$45 = 1.66 and for the Professional/Doctoral Degree of \$81.70/\$51.90 = 1.56. Using these to obtain a fully burdened rate, we end up, for the GS-13 labor, \$42.73 x 1.66 = \$ \$71.03 and, for the GS-14 labor, \$50.49 x 1.56 = \$79.48.



the Commandant (O-10) at \$163. This figure represents a loaded wage rate for uniformed Coast Guard positions.<sup>35</sup>

For positions outside the Coast Guard, we use publicly available data from the BLS Occupational Compensation Survey to estimate wage rates for State and local positions that will be impacted by the final rule. We present the estimated wage rates and a summary of the data for the final rule in table 8.

**Table 8. Loaded Wage Calculation (\$2020)**

<b>Personnel Category</b>	<b>Data Source(s)<sup>1</sup></b>	<b>Mean Hourly Wage</b>	<b>Load Factor</b>	<b>Loaded Wage</b>
Computer Developer	Software Developers, Applications (OC 15-1256) <sup>2</sup>	\$54.94	<b>1.74</b>	\$95.60
Administrative Support	Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (OC 43-6014) <sup>3</sup>	\$19.43	<b>1.74</b>	\$33.81
General Manager	General and Operations Managers (OC 11-1021) in Management Occupations <sup>4</sup>	\$60.45	<b>1.56</b>	\$94.30
Lawyer	Lawyers, Judges, and Related Workers (OC 23-1011) in the Legal Occupations. <sup>5</sup>	\$71.59	<b>1.74</b>	\$124.57
Coast Guard Commandant (O-10)	Military Active & Reserve Component Pay Tables <sup>6</sup>			\$163
Civilian Computer Technician (GS-13)	OPM Salary Table (2020)	\$42.73	<b>1.66</b>	\$71.03
Civilian Manager (GS-14)	OPM Salary Table (2020)	\$50.49	<b>1.57</b>	\$79.48
Coast Guard Compliance Officer (GS-13)	OPM Salary Table (2020)	\$42.73	<b>1.66</b>	\$71.03
Coast Guard Compliance Officer (GS-14)	OPM Salary Table (2020)	\$50.49	<b>1.57</b>	\$79.48
Coast Guard Compliance Officer (average) <sup>7</sup>	Weighted average by the formula: $[(0.75 \times \$71.03 \text{ GS-13 Compliance Officers' wage rate}) + (0.25 \times \$79.48 \text{ GS-14 Compliance Officers' wage rate})]$			\$73.14

<sup>1</sup> To calculate the loaded wages, we used Occupational Code 11-1021 (*General and Operations Managers*) for general managers, Occupational Code 43-6014 (*Secretaries, Except Legal, Medical, and Executive*) for clerical, and Occupational Code 15-1256 (*Software Developers and Software Quality Assurance Analysts and Testers*) for computer developers. Please see the footnotes to table 7 for instructions on calculating load factors.

<sup>2</sup> <https://www.bls.gov/oes/current/oes151256.htm>.

<sup>3</sup> <https://www.bls.gov/oes/2020/may/oes436014.htm>.

<sup>4</sup> <https://www.bls.gov/oes/2020/may/oes111021.htm>.

<sup>5</sup> <https://www.bls.gov/oes/2020/may/oes231011.htm>.

<sup>6</sup> <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>.

<sup>35</sup> The load factor for uniformed positions is based on the Coast Guard's analysis of compensation and benefits of Coast Guard enlisted and commissioned personnel based on data found in <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>. This page was last viewed on December 20, 2019.

<sup>7</sup> Coast Guard compliance officers consist of GS-13s and GS-14s. There are four Coast Guard employees who will complete this requirement (three GS-13s and one GS-14). To calculate the in-government wage rate, we calculated three-fourths of the GS-13 in-government wage rate (\$71.03) and one-fourth of the GS-14 in-government wage rate (\$79.48) and added them together to estimate a more accurate wage rate for the team that will complete this process.

We estimate the costs in this RA in 2020 dollars based on BLS wage rates. We estimate the total cost for States to be \$182,607, undiscounted (not including Government costs). We estimate the total Government costs associated with this final rule to be \$14,537. We show the summary of compliance costs in table 9.

**Table 9. Estimated Cost of Final Rule<sup>1</sup>**

<b>Costs to Regulated Public (States)</b>			
<b>CFR Citation</b>	<b>Task<sup>2</sup></b>	<b>Cost Calculation</b>	<b>Total Costs</b>
<b><i>General Compliance Costs (All States) (See table 3) (One-time costs for States)</i></b>			
33 CFR 187	Become familiar with Final Rule.	56 States × (0.5 hour × \$94.30/hour State manager)	\$2,640
33 CFR 187	Review procedures and website.	56 States × (0.5 hour × \$94.30/hour State manager)	\$2,640
33 CFR 187	Write press release or email.	56 States × (0.5 hour × \$94.30/hour State manager)	\$2,640
33 CFR 187	Update website. <i>(Potential cost, not used in analysis)</i>	56 States x (1 hour x \$95.60/hour computer technician)	Not in cost calculations
<b><i>Subtotal – General Compliance Costs (States)</i></b>			<b><i>\$7,921</i></b>
<b><i>VIS Compliance Costs (States) (See table 5) (One-time costs for States)</i></b>			
33 CFR 187.7	Prepare and submit an MOA.	18 States x (16 hours × \$94.30/hour State manager)	\$27,158
33 CFR 187.7	Complete New User request form.	18 States × (0.1 hour × \$94.30/hour State manager)	\$170
33 CFR 187.7	Coordinate with Coast Guard for data transfer. <i>(Potential cost, but used in analysis)</i>	18 States × (1 hour × \$94.30/hour State manager)	\$1,697
33 CFR 187.7	Draft legislative language to amend privacy laws.	2 States × [(40 hours × \$94.30/hour State manager) + (40 hours × \$124.57/hour State attorney)]	\$17,510
33 CFR 187.7	Put forward and vote on the privacy legislation	Applies to 2 States	Unquantified
<b><i>Subtotal –VIS Compliance Costs (States)</i></b>			<b><i>\$46,535</i></b>
<b><i>UCOTA- V Adoption (Subpart D) Compliance Costs (States) (See table 6) (One-time costs for States)</i></b>			
33 CFR 187.306	Draft UCOTA-V legislative language.	47 States × [(2 hours × \$94.30/hour State manager) + (5 hours × \$124.57/hour State attorney)]	\$38,138
33 CFR 187.306	Put forward and vote on the privacy legislation.	Applies to 47 States	Unquantified
33 CFR 187.306	Coordinate with Coast Guard for compliance and certification.	47 States × (0.5 hour × \$94.30/hour State manager)	\$2,216
33 CFR 187.312	Assist with update and convert to compliant system.	47 States × [(0.25 hour × \$33.81/hour admin assistant) + (0.75 hour × \$94.30/hour State manager)]	\$3,721
33 CFR 187.312	Oversee update or conversion to compliant system.	47 States × (0.25 hour × \$94.30/hour State manager)	\$1,108
33 CFR 187.312	Update or convert to a compliant system.	47 States × (12.6 hours × \$95.60/hour computer technician)	\$56,614
33 CFR 187.312	Amend State’s computers to comport with UCOTA-V.	7 States × [(2 hours × \$95.60/hour computer technician) + (0.25 hour × \$94.30/hour State manager)]	\$1,503
33 CFR 187	Update procedures or processes.	47 States × (5 hours × \$94.30/hour State manager)	\$22,161
33 CFR 187	Post updated procedures on website.	24 States × [(0.25 hour × \$94.30/hour State manager) + (1 hour × \$95.60/hour computer technician)]	\$2,860
<b><i>Subtotal: UCOTA-V (Subpart D) Compliance Costs (States)</i></b>			<b><i>\$128,321</i></b>
<b>Total Cost for Regulated Public (States)</b>			<b>\$182,607</b>
<b>Federal Government Costs (One-time cost to Government for States affected)</b>			

33 CFR 187.306	Process New User request from States.	18 States $\times$ (0.5 hour $\times$ \$73.14/hour Compliance Officer)	\$658
33 CFR 187.306	Process an MOA from States.	18 States $\times$ [(0.2 hour $\times$ \$163/hour Commandant) + (8.25 hours $\times$ \$73.14/hour Compliance Officer)]	\$11,448
33 CFR 187.306	Coordinate with 18 States for VIS.	18 States $\times$ (0.5 hour $\times$ \$73.14/hour Compliance Officer)	\$658
33 CFR 187.312	Coordinate with 47 States on UCOTA-V certification.	47 States $\times$ (0.5 hour $\times$ \$73.14/hour Compliance Officer)	\$1,682
33 CFR 187	Update Coast Guard's website. (Initial year cost)	(1 hour $\times$ \$71.03/hour computer technician) + (0.25 hour $\times$ \$79.48/hour Federal manager)	\$91
<b>Total for Federal Government (Coast Guard)</b>			<b>\$14,537</b>
<b>Total for Regulated Public and Government</b>			<b>\$197,148</b>

<sup>1</sup> Totals may not sum due to rounding. Undiscounted costs appear in the table.

<sup>2</sup> "Potential indirect costs" not included (See table 2). Unquantified costs included but are not part of cost calculations.

### **Total Costs**

Using a 7-percent discount rate, we estimate the total discounted cost of the final rule to be \$138,490 (rounded). The total annualized cost at a 7-percent discount rate is \$19,718 (rounded). See table 10.

For the estimated cost to the regulated public, the Coast Guard expects all States will comply within 10 years of this rule. However, we do not have specific information as to the rate of compliance. As such, we assume equal probability for each year; that is, we estimate 10 percent will comply each year for the next 10 years. Given this, the total cost to the regulated public, as shown in table 9, is \$182,607. This is \$18,261 (rounded) when averaged across 10 years.

For the cost to the Government, we assume that the \$91 website update will occur in the first year. Subtracting that, we calculate the annual cost over the next 9 years by dividing the total by 10 (\$1,445). The first year cost to Government will be  $\$1,445 + \$91$ , which is \$1,536.

**Table 10. Total Estimated Cost of the Final Rule  
(10-year Period of Analysis, 7- and 3-Percent Discount Rates)(\$2020)<sup>1</sup>**

	Costs to the Regulated Public (States)			Costs to the Government			Total Estimated Costs		
Year	Undiscounted	7%	3%	Undiscounted	7%	3%	Undiscounted	7%	3%
1	\$18,261	\$17,066.07	\$17,728.83	\$1,536	\$1,435.51	\$1,491.26	\$19,797	\$18,501.59	\$19,220.10
2	\$18,261	\$15,949.60	\$17,212.46	\$1,445	\$1,262.12	\$1,362.05	\$19,706	\$17,211.72	\$18,574.51
3	\$18,261	\$14,906.17	\$16,711.13	\$1,445	\$1,179.55	\$1,322.38	\$19,706	\$16,085.72	\$18,033.51
4	\$18,261	\$13,931.00	\$16,224.40	\$1,445	\$1,102.38	\$1,283.86	\$19,706	\$15,033.38	\$17,508.26
5	\$18,261	\$13,019.63	\$15,751.84	\$1,445	\$1,030.27	\$1,246.47	\$19,706	\$14,049.89	\$16,998.31
6	\$18,261	\$12,167.88	\$15,293.05	\$1,445	\$962.86	\$1,210.16	\$19,706	\$13,130.74	\$16,503.21
7	\$18,261	\$11,371.85	\$14,847.62	\$1,445	\$899.87	\$1,174.92	\$19,706	\$12,271.72	\$16,022.54
8	\$18,261	\$10,627.89	\$14,415.17	\$1,445	\$841.00	\$1,140.70	\$19,706	\$11,468.90	\$15,555.86
9	\$18,261	\$9,932.61	\$13,995.31	\$1,445	\$785.98	\$1,107.47	\$19,706	\$10,718.60	\$15,102.78
10	\$18,261	\$9,282.81	\$13,587.68	\$1,445	\$734.56	\$1,075.22	\$19,706	\$10,017.38	\$14,662.89
<b>Total</b>	<b>\$182,607.00</b>	<b>\$128,255.52</b>	<b>\$155,767.47</b>	<b>\$14,537.00</b>	<b>\$10,234.12</b>	<b>\$12,414.49</b>	<b>\$197,148.00</b>	<b>\$138,489.64</b>	<b>\$168,181.97</b>
<b><i>Annualized</i></b>		<b><i>\$18,260.70</i></b>	<b><i>\$18,260.70</i></b>		<b><i>\$1,457.11</i></b>	<b><i>\$1,455.36</i></b>		<b><i>\$19,717.81</i></b>	<b><i>\$19,716.06</i></b>

<sup>1</sup> Totals may not sum due to independent rounding.

## **Benefits**

This final rule amends the Coast Guard's existing regulations (see 33 CFR 187 subpart D, "Guidelines for State Vessel Titling Systems") to better align with UCOTA-V. The final rule encourages uniformity amongst the States through the adoption of the UCOTA-V model, in its entirety or in part, and follows recommendations by the National Boating Safety Advisory Council and NASBLA. Although the movement to harmonize State titling laws has existed for some time, not all States have pursued legislation. Some States have chosen to wait for the Coast Guard to pass the UCOTA-V regulation.

This final rule also promotes consumer protection against fraud. A large number of recreational vessels are resold annually. In 2017, there were approximately 1.1 million pre-owned vessels sold in the United States.<sup>36</sup> Given this large number, the industry is vulnerable to the types of fraud UCOTA-V is designed to prevent.

The final rule facilitates the procurement of secured loans on vessels. If the Coast Guard does not certify a State titling system, then a State cannot confer preferred mortgage status on a mortgage or security interest for a vessel, which functions as a security measure for financial entities. Many financial institutions require eligible vessels to be documented and to have their preferred mortgages recorded. A preferred mortgage is considered more secure, with less risk to the lender. This places the lender in a position to provide lower interest rates over longer terms to the consumer. In turn, the lender may earn more over the term of the loan with less risk. More specifically, the lender faces a lower risk of loans defaulting; therefore, the lender's loan portfolio may provide better returns despite the lower interest rates offered to borrowers.

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<sup>36</sup> <https://boatingindustry.com/news/2021/11/09/pre-owned-boat-sales-exceeded-one-million-units-in-2020-for-the-first-time-since-2006/> ("Pre-owned boat sales exceeded one million units in 2020 for the first time since 2006," November 9, 2021). Accessed and last viewed on May 12, 2022.

The consumer benefits as well. With preferred loans, the borrower has a loan with better terms. Relative to a non-preferred loan, the consumer pays less per month due to the lower interest rate on preferred loans.

In addition, consistent titling procedures across States will deter the practice of “title washing,” which occurs after the sale of a damaged vessel for salvage when the buyer makes cosmetic repairs and resells the vessel without disclosing its previous damage. Recreational boaters may benefit from this final rule by being able to assist States and law enforcement in recovering their lost or stolen vessels.

Furthermore, we intend this final rule to promote maritime security by facilitating State participation in the VIS. After the September 2001 terrorist attacks, a Coast Guard gap analysis showed that law enforcement agencies, including the Coast Guard, lacked the ability to easily and verifiably identify recreational vessels and their owners and operators, especially when a vessel is registered in a State other than that in which the law enforcement agency operates. This inability deprives law enforcement agencies of critical tools for deterring crime and maritime-based terrorism.

Since its inception in 2007, the VIS has remedied this inability by collecting and providing verifiable data for vessels in VIS-participating States. However, as of May 10, 2022, 16 States still do not participate in the VIS.<sup>37</sup> Facilitating full VIS participation by these States will enhance maritime security. Because of the high level of interest among the States in aligning their vessel titling systems with UCOTA-V, aligning our subpart D regulations with UCOTA-V will make it easier for States to obtain subpart D certification.

### **Alternatives Considered**

*Alternative 1 – Take no action.* This alternative would allow existing regulations to remain in conflict with State laws and UCOTA-V. For States complying with the

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<sup>37</sup> <https://cgmix.uscg.mil/VISInformation.aspx?VISOption=>.



existing regulations, this alternative would result in them not receiving the benefits of deterred “title washing,” recovery and identification of abandoned vessels, consumer fraud protection, and security measures for financial entities. Participation in the VIS would continue at its current low rate. This alternative would result in no additional costs, as no new regulations would be implemented, but would also result in no benefits, as there would be no changes to current practice. Therefore, we rejected this alternative.

*Alternative 2* – This is the preferred alternative. This alternative will change the guidelines in subpart D so that any State that adopts UCOTA-V and participates in the VIS would be in compliance. This will encourage compliance and participation and provide benefits to States, lenders, and consumers. The cost implications associated with this alternative are specified in the **Costs** section of this RA and assume 100 percent participation from all 56 States. The total 7 percent discounted cost over 10 years will be \$176,570. The qualitative benefits would be increased mitigation of fraudulent ownership, the creation of uniformity amongst the States, which will help facilitate transfers of vessel ownership, to deter theft of vessels and aid law enforcement agencies by making recovery of stolen vessels across State lines easier, promote consumer protection, and facilitate making secured loans on vessels. Therefore, this is the preferred alternative.

*Alternative 3* – This alternative would repeal existing guidelines for certification of State titling requirements and allow States to regulate vessel titling with no coordination or oversight. This would remove the ability for States to establish separate programs to enable vessels to gain preferred mortgage status and discourage participation in the VIS. In this scenario, each State would have a unique vessel titling system; this alternative would produce varying costs and benefits, which may be beneficial to the States as they could customize a titling program to meet their specific needs. However, we are unable to estimate the costs due to the number of possibilities offered, and they

would occur without coordination or oversight from the Coast Guard. Harmonization of regulations across States would be impossible. As this would not satisfy the goals of this regulatory action, we rejected this alternative.

*B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Based on the analysis above, this final rule will affect 56 States and U.S. territories.<sup>38</sup> All governmental jurisdictions that will potentially be directly regulated by this final rule have populations greater than 50,000. These entities are not considered to be small entities based on the Small Business Administration’s definition of what is a small governmental jurisdiction.<sup>39</sup> Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*D. Collection of Information*

This final rule calls for the modification of an existing collection of information

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<sup>38</sup> See 46 U.S.C. 123. The only issuing authorities are the 56 States. Tribal governments are excluded legally as authorities from numbering and titling vessels.

<sup>39</sup> Small governmental jurisdictions are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

*Title:* Vessel Identification System

*OMB Control Number:* 1625-0070

*Summary of the Collection of Information:* Public Law 100-710 (46 U.S.C. 12501) requires the establishment of the VIS, which provides participating States with access to data of vessels numbered by States. States voluntarily provide the VIS data. The States, boating public, and law enforcement are the primary beneficiaries. To become part of the VIS, States must submit an MOA to the Coast Guard.

*Need for Information:* The VIS collects State-numbered vessel identification and ownership data and provides that data to law enforcement agencies in the States that choose to participate in the VIS. Participation in the VIS is entirely voluntary. In order to participate, States must comply with certain requirements to ensure the integrity and uniformity of the information provided to the VIS.

*Proposed Use of Information:* The Coast Guard will use this information to track vessel information and facilitate the recovery of stolen or missing vessels.

*Description of the Respondents:* The 50 States, District of Columbia, and 5 territories. The Coast Guard describes these as “56 States.”

*Number of Respondents:* As a result of the proposal, the Coast Guard anticipates that there will be two additional States joining the VIS annually until all States join.

Over a 10 year period, this final rule will increase the number of respondents from 38 States to 56 States.

*Frequency of Response:* The number of responses per year of this final rule will vary by participating States. New MOA applications, VIS user requests, and VIS data uploads are required with the initial MOA application process. For existing participants, VIS user requests and VIS data uploads are required. Based on the current collection of VIS information data, the Coast Guard anticipates that each new participant will submit an MOA application once, a VIS user request once a year, and upload VIS data every 2 weeks.

*Burden of Response:* The burden of response includes three components—MOA applications, VIS data uploads, and VIS user requests. The burden for an MOA application, VIS data upload and VIS new user request form are 16 hours, 0.6 hour, and 0.1 hour, respectively. An MOA application and a VIS new user request form will be prepared by a manager. A computer technician will handle the VIS data upload

*Estimate of Total Annual Burden:* This final rule will require additional hours for VIS data uploads (32 hours annually),<sup>40</sup> MOAs (32 hours annually), and VIS user requests (1 hour annually).<sup>41</sup> The final rule will increase the total burden by 64 hours (rounded from the actual 63.3 hours), from 5,792 hours to 5,856 hours.<sup>42</sup>

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has not yet completed its review of this collection.

#### *E. Federalism*

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<sup>40</sup> Rounded from the actual 31.2 hours.

<sup>41</sup> Rounded from the actual 0.2 hour.

<sup>42</sup> Rounded from the actual 5,855.3 hours.

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

The purpose of this final rule is to revise Coast Guard requirements for State participation in the Coast Guard-maintained VIS and guidelines for State vessel titling systems. The Coast Guard is mandated to establish and maintain the VIS, but State participation in the VIS is voluntary. Nothing in this final rule requires States to participate in the VIS. However, once electing to participate in the VIS, a State must comply with the VIS requirements to ensure integrity and uniformity of information. Likewise, requesting certification that a State vessel titling system complies with the guidelines is also voluntary, but such a system must comply with subpart D for voluntary certification. This final rule will not require States to request certification, change their existing titling systems, or otherwise preempt related State regulations. Therefore, the final rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

#### *F. Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this final rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*G. Taking of Private Property*

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

*H. Civil Justice Reform*

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

*I. Protection of Children*

We have analyzed this final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This final rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

This final rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. Energy Effects*

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this final rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. This final rule is categorically excluded under paragraphs L54 and L57 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1. Paragraph L54 pertains to regulations which are editorial or procedural and paragraph L57 pertains to regulations concerning documentation of vessels. This final rule involves changes to regulations for certifying a State’s titling system for undocumented vessels.

**List of Subjects in 33 CFR Part 187**

Administrative practice and procedure, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 187 as follows:

## **PART 187—VESSEL IDENTIFICATION SYSTEM**

1. Revise the authority citation for part 187 to read as follows:

**Authority:** 46 U.S.C. 2103, 12501, 31322; DHS Delegation No. 00170.1, Revision No. 01.2, paragraph (II)(92).

2. Revise § 187.7 to read as follows:

### **§ 187.7 Definitions.**

As used in this part—

*Approved numbering system* means a numbering system approved by the Secretary of the Department of Homeland Security under 46 U.S.C. Chapter 123.

*Barge* means a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.

*Builder's certificate* means a certificate of the facts of build of a vessel described in 46 CFR 67.99.

*Buyer* means a person who buys or contracts to buy a vessel.

*Cancel*, with respect to a certificate of title, means to make the certificate ineffective.

*Certificate of documentation* means Coast Guard Form CG-1270.

*Certificate of origin* means a record created by a manufacturer or importer as the manufacturer's or importer's proof of identity of a vessel, and includes a manufacturer's certificate or statement of origin and an importer's certificate or statement of origin, but excludes a builder's certificate.

*Certificate of ownership* means Coast Guard Form CG-1330.



*Certificate of title* means a record, created by the office or by a governmental agency of another State under the law of that State, which is designated as a certificate of title by the office or agency and is evidence of ownership of a vessel.

*Commandant* means the Commandant of the U.S. Coast Guard or an authorized representative of the Commandant of the U.S. Coast Guard.

*Dealer* means a person, including a manufacturer, in the business of selling vessels.

*Documented vessel* means a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. Section 12105, and excludes a foreign-documented vessel.

*Electronic* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

*Electronic certificate of title* means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.

*Foreign-documented vessel* means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States, identifying each person having an ownership interest in a vessel, and includes a unique alphanumeric designation for the vessel.

*Good faith* means honesty in fact and the observance of reasonable commercial standards of fair dealing.

*Hull damaged* means compromised with respect to the integrity of a vessel's hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel's hull.

*Hull identification number* or *HIN* means the alphanumeric designation assigned to a vessel under subpart C of 33 CFR part 181.

*Issuing authority* means either a State that has an approved numbering system or the Coast Guard in a State that does not have an approved numbering system.

*Lien creditor*, with respect to a vessel, means—

- (1) A creditor that has acquired a lien on the vessel by attachment, levy, or the like;
- (2) An assignee for benefit of creditors from the time of assignment;
- (3) A trustee in bankruptcy from the date of the filing of the petition; or
- (4) A receiver in equity from the time of appointment.

*Manufacturer* means any person engaged in the business of manufacturing or importing new vessels for the purpose of sale or trade.

*Office* means the State department or agency that creates certificates of title.

*Owner* means a person having legal title to a vessel.

*Owner of record* means the owner indicated in the files of the Office or, if the files indicate more than one owner, the one first indicated.

*Participating State* means a State certified by the Commandant as meeting the requirements of subpart C of this part.

*Person* means an individual or any form of legal or commercial entity.

*Purchase* means to take by any voluntary transaction that creates an interest in a vessel.

*Purchaser* means a person taking by purchase.

*Record* means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

*Secured party*, with respect to a vessel, means a person—

- (1) In whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(2) Who is a consignor under State law as prescribed by State law related to security interests in goods; or

(3) Who holds a security interest arising under State law related to security interests in goods.

*Secured party of record* means the secured party whose name is indicated as the name of the secured party in the files of the office or, if the files indicate more than one secured party, the one first indicated.

*Security interest* means an interest in a vessel that secures payment or performance of an obligation if the interest is created by contract or otherwise as prescribed by state law related to security interests in goods.

*Sign* means, with present intent to authenticate or adopt a record, to—

(1) Make or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an electronic symbol, sound, or process.

*State* means a State of the United States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands, and any other territory or possession of the United States.

*State of principal operation* means the State on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other State during a calendar year.

*Title brand* means a designation of previous damage, use, or condition that must be indicated on a certificate of title.

*Titled vessel* means a vessel titled by a State.

*Titling authority* means a State whose vessel titling system has been certified by the Commandant under subpart D of this part.

*Transfer of ownership* means a voluntary or involuntary conveyance of an interest in a vessel.

*Vessel* means every description of watercraft used or capable of being used as a means of transportation on water, except—

- (1) A seaplane;
- (2) An amphibious vehicle for which a certificate of title is issued pursuant to a state's motor vehicle certificate of title act or a similar statute of another state;
- (3) Watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;
- (4) A stationary floating structure that—
  - (i) Does not have and is not designed to have a mode of propulsion of its own;
  - (ii) Is dependent for utilities upon a continuous utility hookup to a source originating on shore; and
  - (iii) Has a permanent, continuous hookup to a shore side sewage system.
- (5) Watercraft owned by the United States, a State, or a foreign government or a political subdivision of any of them; and
- (6) Watercraft used solely as a lifeboat on another watercraft.

*Vessel Identification System* or *VIS* means a system for collecting information on vessels and vessel ownership as required by 46 U.S.C. 12501.

*Vessel number* means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. 12301.

*Written certificate of title* means a certificate of title consisting of information inscribed on a tangible medium.

3. Revise subpart D to read as follows:

**Subpart D—State Vessel Titling Systems**

Sec.

- 187.301 Certification for preferred mortgage status – Eligibility requirements.
- 187.302 Terms States must define.
- 187.303 Applicability.
- 187.304 Titling exclusively in one State.
- 187.305 Law governing vessel covered by certificate of title.
- 187.306 Certificate of title required.
- 187.307 Application for certificate of title.
- 187.308 Creation and cancellation of certificate of title.
- 187.309 Content of certificate of title.
- 187.310 Title brand.
- 187.311 Maintenance of and access to files.
- 187.312 Action required on creation of certificate of title.
- 187.313 Effect of certificate of title.
- 187.314 Effect of possession of certificate of title; judicial process.
- 187.315 Perfection of security interest.
- 187.316 Termination statement.
- 187.317 Transfer of ownership.
- 187.318 Effect of missing or incorrect information.
- 187.319 Transfer of ownership by secured party's transfer statement.
- 187.320 Transfer by operation of law.
- 187.321 Application for transfer of ownership or termination of security interest without certificate of title.
- 187.322 Replacement certificate of title.
- 187.323 Rights of purchaser other than secured party.
- 187.324 Rights of secured party.
- 187.325 Duties and operation of office.

#### **Subpart D—State Vessel Titling Systems**

##### **§ 187.301 Certification for preferred mortgage status – Eligibility requirements.**

The Commandant, under 46 U.S.C. 31322(d)(1)(A) and § 187.13, will certify a State whose vessel titling system meets the requirements of this subpart as eligible to have security interests that are perfected under its law deemed preferred mortgages under 46 U.S.C. 31322. The State must also comply with the VIS participation requirements of § 187.11 and subpart C of this part and make vessel information it collects available to the VIS.

##### **§ 187.302 Terms States must define.**

(a) A State must define the terms “certificate of origin”, “dealer”, “documented vessel”, “issuing authority”, “manufacturer”, “owner”, “person”, “secured party”,

“security interest”, “titling authority”, and “vessel” substantially as defined in 33 CFR 187.7.

(b) In addition to the definitions in § 187.7, a State must also define the following terms as prescribed by State law related to security interests in goods:

- (1) *Agreement*;
- (2) *Buyer in ordinary course of business*;
- (3) *Conspicuous*;
- (4) *Consumer goods*;
- (5) *Debtor*;
- (6) *Knowledge*;
- (7) *Lease*;
- (8) *Lessor*;
- (9) *Notice*;
- (10) *Representative*;
- (11) *Sale*;
- (12) *Security agreement*;
- (13) *Seller*;
- (14) *Send*; and
- (15) *Value*.

(c) The definitions in § 187.7 and the terms in paragraph (b) of this section do not apply to any State or Federal law governing licensing, numbering, or registration if the same term is used in that law.

### **§ 187.303 Applicability.**

Subject to a savings clause provided under state law, this subpart applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction,

certificate of title, or record was entered into or created before the effective date of the State law.

**§ 187.304 Titling exclusively in one State.**

A State must require that all vessels required to be numbered in the State under 46 U.S.C. Chapter 123 be titled only in that State, if that State issues titles to that class of vessels.

**§ 187.305 Law governing vessels covered by certificate of title.**

(a) The local law of the State under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the State and the vessel or its owner.

(b) A vessel becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the office in accordance with this subpart or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

**§ 187.306 Certificate of title required.**

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, the owner of a vessel must deliver to the office of the State in which the vessel is principally used an application for a certificate of title for the vessel, with the applicable fee, not later than 20 days after the later of—

- (1) The date of a transfer of ownership; or
  - (2) The date the State becomes the State of principal use.
- (b) An application for a certificate of title is not required for—
- (1) A documented vessel;
  - (2) A foreign-documented vessel;

- (3) A barge;
  - (4) A vessel before delivery if the vessel is under construction or completed pursuant to contract; or
  - (5) A vessel held by a dealer for sale or lease.
- (c) The office may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to 46 U.S.C. 12301 unless it has created a certificate of title for the vessel or an application for a certificate for the vessel and the applicable fee have been delivered to the office.

**§ 187.307 Application for certificate of title.**

- (a) Except as otherwise provided in §§ 187.310, 187.315, 187.319, 187.320, 187.321, and 187.322, only an owner may apply for a certificate of title.
- (b) An application for a certificate of title must be signed by the applicant and contain—
- (1) The applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;
  - (2) The name and mailing address of each other owner of the vessel;
  - (3) The social security number or taxpayer identification number of each owner;
  - (4) The hull identification number (HIN) for the vessel or, if none, an application for the issuance of a HIN for the vessel;
  - (5) The vessel number for the vessel or, if none issued by the office, an application for a vessel number;
  - (6) A description of the vessel as required by the office, which must include—
    - (i) The official number for the vessel, if any, assigned by the Coast Guard;
    - (ii) The name of the manufacturer, builder, or maker;
    - (iii) The model year or the year in which the manufacture or build of the vessel was completed;



- (iv) The overall length of the vessel;
  - (v) The vessel type, as described in 33 CFR 174.19;
  - (vi) The hull material, as described in 33 CFR 174.19;
  - (vii) The propulsion type, as described in 33 CFR 174.19;
  - (viii) The engine drive type, as described in 33 CFR 174.19, if any; and
  - (ix) The fuel type, as described in 33 CFR 174.19, if any;
- (7) An indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;
- (8) A statement that the vessel is not a documented vessel or a foreign-documented vessel;
- (9) Any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;
- (10) If the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;
- (11) If the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price, if any, and the date of the transfer; and
- (12) If the vessel was previously registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.
- (c) In addition to the information required by paragraph (b) of this section, an application for a certificate of title may contain an electronic communication address of the owner, transferor, or secured party.
- (d) Except as otherwise provided in §§ 187.319, 187.320, 187.321, and 187.322, an application for a certificate of title must be accompanied by a certificate of title signed

by the owner shown on the certificate which identifies the applicant as the owner of the vessel, or is accompanied by a record that identifies the applicant as the owner.

(e) If there is no certificate of title as discussed in paragraph (d) of this section, an application for a certificate of title must be accompanied by—

(1) If the vessel was a documented vessel, a record issued by the Coast Guard that shows the vessel is no longer a documented vessel and identifies the applicant as the owner;

(2) If the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or

(3) In all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the office identifies the applicant as the owner.

(f) A record submitted in connection with an application is part of the application and the office must maintain it in its files.

(g) The office may require an application for a certificate of title to be accompanied by payment or evidence of payment of all fees and taxes payable by the applicant under State law if in connection with the application or the acquisition or use of the vessel.

### **§ 187.308 Creation and cancellation of certificate of title.**

(a) Unless an application for a certificate of title is rejected under paragraph (c) or (d) of this section, the office must create a certificate for the vessel in accordance with paragraph (b) of this section not later than 20 days after delivery to it of an application that complies with § 187.307.

(b) If the office creates electronic certificates of title, it must create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the office create a written certificate.

(c) Except as otherwise provided in paragraph (d) of this section, the office may reject an application for a certificate of title only if—

(1) The application does not comply with § 187.307;

(2) The application does not contain documentation sufficient for the office to determine whether the applicant is entitled to a certificate;

(3) There is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or

(4) The application does not comply with State law.

(d) The office must reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

(e) The office may cancel a certificate of title created by it only if the office—

(1) Could have rejected the application for the certificate under paragraph (c) of this section;

(2) Is required to cancel the certificate under another provision of this subpart; or

(3) Receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

**§ 187.309 Content of certificate of title.**

(a) A certificate of title must contain—

(1) The date the certificate was created;

(2) The name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the office;

(3) The mailing address of the owner of record;

(4) The hull identification number (HIN);

(5) The information listed in § 187.307(b)(6);

(6) Except as otherwise provided in § 187.315(b), the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the office; and

(7) All title brands indicated in the files of the office covering the vessel, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the office.

(b) This subpart does not preclude the office from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

(c) For each title brand indicated on a certificate of title, the certificate must identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: “Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand).”

(d) If the files of the office indicate that a vessel was previously registered or titled in a foreign country, the office must indicate on the certificate of title that the vessel was registered or titled in that country.

(e) A written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form must include a certification, signed under penalty of perjury, that the statements made are true and correct to the best of each owner’s knowledge, information, and belief.

(f) A written certificate of title must contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

**§ 187.310 Title brand.**

(a) Unless paragraph (c) of this section applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, if the damage occurred while that person was an owner of the vessel and the person has notice of the damage at the time of the transfer, the owner must—

(1) Deliver to the office an application for a new certificate that complies with § 187.307 of this part and includes the title brand designation “Hull Damaged”; or

(2) Indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

(b) Not later than 20 days after delivery to the office of the application under paragraph (a)(1) of this section or the certificate of title under paragraph (a)(2) of this section, the office must create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(c) Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, the insurer must deliver to the office an application for a new certificate that complies with § 187.306 and includes the title brand designation “Hull Damaged”. Not later than 20 days after delivery of the application to the office, the office must create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(d) An owner of record who fails to comply with paragraph (a) of this section, a person who solicits or colludes in a failure by an owner of record to comply with paragraph (a) of this section, or an insurer that fails to comply with paragraph (c) of this section is subject to penalty as prescribed by state law.

#### **§ 187.311 Maintenance of and access to files.**

(a) For each record relating to a certificate of title submitted to the office, the office must—

(1) Ascertain or assign the hull identification number (HIN) for the vessel in accordance with 33 CFR part 181;

(2) Maintain the HIN and all the information submitted with the application pursuant to § 187.307(b) to which the record relates, including the date and time the record was delivered to the office;

(3) Maintain the files for public inspection subject to paragraph (e) of this section; and

(4) Index the files of the office as required by paragraph (b) of this section.

(b) The office must maintain in its files the information contained in all certificates of title created under this subpart. The information in the files of the office must be searchable by the HIN of the vessel, the vessel number, the name of the owner of record, and any other method used by the office.

(c) The office must maintain in its files, for each vessel for which it has created a certificate of title, all title brands known to the office, the name of each secured party known to the office, the name of each person known to the office to be claiming an ownership interest, and all stolen-property reports the office has received.

(d) Upon request, for safety, security, or law-enforcement purposes, the office must provide to Federal, State, or local government the information in its files relating to any vessel for which the office has issued a certificate of title.

(e) Except as otherwise provided by laws of the titling State, the information required under § 187.309 is a public record, but the information provided under § 187.307(b)(3) is not a public record.

#### **§ 187.312 Action required on creation of certificate of title.**

(a) On creation of a written certificate of title, the office must promptly send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the files of the office. On creation of an electronic certificate

of title, the office must promptly send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the files of the office. The office may send the record to the person's mailing address or, if indicated in the files of the office, an electronic address.

(b) If the office creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate. The office must maintain in the files of the office the date and time of cancellation.

(c) Before the office creates an electronic certificate of title, any written certificate for the vessel must be surrendered to the office. If the office creates an electronic certificate, the office must destroy or otherwise cancel the written certificate for the vessel that has been surrendered to the office and maintain in the files of the office the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the office must indicate on the face of the certificate that it has been canceled.

#### **§ 187.313 Effect of certificate of title.**

A certificate of title is *prima facie* evidence of the accuracy of the information in the record that constitutes the certificate.

#### **§ 187.314 Effect of possession of certificate of title; judicial process.**

Possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel. This subpart does not prohibit enforcement under State law, other than this subpart (33 CFR part 187 subpart D), of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of a statutory or common-law lien on a certificate does not invalidate the lien.

#### **§ 187.315 Perfection of security interest.**

(a) Except as otherwise provided in this section or a savings clause provided under state law, a security interest in a vessel may be perfected only by delivery to the office of an application for a certificate of title that identifies the secured party and otherwise complies with § 187.307. The security interest is perfected on the later of delivery to the office of the application and the applicable fee or attachment of the security interest as prescribed by State law related to security interests in goods.

(b) If the interest of a person named as owner, lessor, consignee, or bailor in an application for a certificate of title delivered to the office is a security interest, the application sufficiently identifies the person as a secured party. Identification on the application for a certificate of a person as owner, lessor, consignee, or bailor is not by itself a factor in determining whether the person's interest is a security interest.

(c) If the office has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the office of an application, on a form the office may require, to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include—

- (1) The name of the owner of record;
- (2) The name and mailing address of the secured party;
- (3) The hull identification number (HIN) for the vessel; and
- (4) If the office has created a written certificate of title for the vessel, the certificate.

(d) A security interest perfected under paragraph (c) of this section is perfected on the later of delivery to the office of the application and all applicable fees or attachment of the security interest as prescribed by State law related to security interests in goods.

(e) On delivery of an application that complies with paragraph (c) of this section and payment of all applicable fees, the office must create a new certificate of title



pursuant to § 187.308 and deliver the new certificate or a record evidencing an electronic certificate pursuant to § 187.312(a). The office must maintain in the files of the office the date and time of delivery of the application to the office.

(f) If a secured party assigns a perfected security interest in a vessel, the receipt by the office of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. Upon obtaining a release from the secured party indicated in the files of the office or on the certificate, a purchaser of a vessel subject to a security interest takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the files of the office or on the certificate.

(g) This section does not apply to a security interest—

(1) Created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;

(2) In a barge for which no application for a certificate of title has been delivered to the office; or

(3) In a vessel before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to the office.

(h) This paragraph applies if a certificate of documentation for a documented vessel is deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with 42 U.S.C. 31321, the security interest is and remains perfected until the earlier of 4 months after cancellation of the certificate or the time the security interest becomes perfected under this subpart.

(i) A security interest in a vessel arising under State law related to security interests in goods is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before the debtor obtains possession the security interest is perfected pursuant to paragraphs (a) or (c) of this section.

(j) A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in State law.

(k) A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in State law.

**§ 187.316 Termination statement.**

(a) A secured party indicated in the files of the office as having a security interest in a vessel must deliver a termination statement to the office and, on the debtor's request, to the debtor, by the earlier of—

(1) Twenty days after the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or

(2) If the vessel is consumer goods, 30 days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(b) If a written certificate of title has been created and delivered to a secured party and a termination statement is required under paragraph (a) of this section, the secured party, not later than the date required by paragraph (a), must deliver the certificate to the debtor or to the office with the statement. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party must deliver with the statement, not later than the date required by paragraph (a), an application for a replacement certificate meeting the requirements of § 187.322.

(c) On delivery to the office of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. If the security interest to which the statement relates was indicated on the certificate of title, the office must create a new certificate and deliver the new certificate or a record evidencing an electronic certificate. The office must maintain in its files the date and time of delivery to the office of the statement.

(d) A secured party that fails to comply with this section is liable for any loss that the secured party had reason to know might result from its failure to comply and which could not reasonably have been prevented and for the cost of an application for a certificate of title under § 187.307 or § 187.322.

**§ 187.317 Transfer of ownership.**

(a) On voluntary transfer of an ownership interest in a vessel covered by a certificate of title, the following rules apply:

(1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the transferor must promptly sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor's compliance with this paragraph. A secured party does not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement.

(2) If the certificate of title is an electronic certificate of title, the transferor must promptly sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.

(3) The transferee has a right enforceable by specific performance to require the transferor comply with paragraph (a)(1) or (2) of this section.

(b) The creation of a certificate of title identifying the transferee as owner of record satisfies paragraph (a) of this section.

(c) A failure to comply with paragraph (a) or to apply for a new certificate of title does not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise provided in § 187.318, § 187.319, § 187.323(a), or § 187.324, a transfer of ownership without compliance with paragraph (a) of this section is not effective against another person claiming an interest in the vessel.

(d) A transferor that complies with paragraph (a) of this section is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

**§ 187.318 Effect of missing or incorrect information.**

Except as otherwise provided as prescribed by State law related to security interests in goods, a certificate of title or other record required or authorized by this subpart is effective even if it contains incorrect information or does not contain required information.

**§ 187.319 Transfer of ownership by secured party's transfer statement.**

(a) In this section, "secured party's transfer statement" means a record signed by the secured party of record stating—

- (1) That there has been a default on an obligation secured by the vessel;
- (2) The secured party of record is exercising or has exercised post-default remedies with respect to the vessel;
- (3) By reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;
- (4) The name and last known mailing address of the owner of record and the secured party of record;
- (5) The name of the transferee;
- (6) Other information required by § 187.307(b); and
- (7) One of the following:

- (i) The certificate of title is an electronic certificate;
- (ii) The secured party does not have possession of the written certificate of title created in the name of the owner of record; or
- (iii) The secured party is delivering the written certificate of title to the office with the secured party's transfer statement.

(b) Unless the office rejects a secured party's transfer statement for a reason stated in § 187.308(c), not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under State law in connection with the statement or the acquisition or use of the vessel, the office must—

- (1) Accept the statement;
- (2) Amend the files of the office to reflect the transfer; and
- (3) If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title—

- (i) Cancel the certificate even if the certificate has not been delivered to the office;
- (ii) Create a new certificate indicating the transferee as owner; and
- (iii) Deliver the new certificate or a record evidencing an electronic certificate.

(c) An application under paragraph (a) of this section or the creation of a certificate of title under paragraph (b) of this section is not by itself a disposition of the vessel and does not by itself relieve the secured party of its duties under State law.

#### **§ 187.320 Transfer by operation of law.**

- (a) In this section—
  - (1) “By operation of law” means pursuant to a law or judicial order affecting ownership of a vessel—
    - (i) Because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(ii) Through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or

(iii) Through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a vessel.

(b) A transfer-by-law statement must contain—

(1) The name and last known mailing address of the owner of record and the transferee and the other information required by § 187.307(b);

(2) Documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest;

(3) A statement that—

(i) The certificate of title is an electronic certificate of title;

(ii) The transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(ii) The transferee is delivering the written certificate to the office with the transfer-by-law statement; and

(4) Except for a transfer described in paragraph (a)(1)(i) of this section, evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the files of the office as having an interest, including a security interest, in the vessel.

(c) Unless the office rejects a transfer-by-law statement for a reason stated in § 187.308(c) or because the statement does not include documentation satisfactory to the office as to the transferee’s ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the office of the statement and payment of fees and

taxes payable under State law in connection with the statement or with the acquisition or use of the vessel, the office must—

- (1) Accept the statement;
- (2) Amend the files of the office to reflect the transfer; and
- (3) If the name of the owner whose ownership interest is being transferred is

indicated on the certificate of title—

- (i) Cancel the certificate even if the certificate has not been delivered to the office;
- (ii) Create a new certificate indicating the transferee as owner;
- (iii) Indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and
- (iv) Deliver the new certificate or a record evidencing an electronic certificate.

(d) This section does not apply to a transfer of an interest in a vessel by a secured party as prescribed by State law related to security interests in goods.

**§ 187.321 Application for transfer of ownership or termination of security interest without certificate of title.**

(a) Except as otherwise provided in §§ 187.319 and 187.320, if the office receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a transfer of ownership or a termination statement, the office may create a new certificate under this section only if—

- (1) All other requirements under §§ 187.307 and 187.308 are met;
- (2) The applicant provides an affidavit stating facts showing that the applicant is entitled to a transfer of ownership or termination statement;
- (3) The applicant provides the office with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the files of the office as having an interest, including a security interest, in the vessel, at least

45 days have passed since the notification was sent, and the office has not received an objection from any of those persons; and

(4) The applicant submits any other information required by the office as evidence of the applicant's ownership or right to terminate the security interest, and the office has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

(b) The office may indicate in a certificate of title created under paragraph (a) of this section that the certificate was created without submission of a signed certificate or termination statement. Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel is delivered to the office not later than 1 year after creation of the certificate, on request in a form and manner required by the office, the office must remove the indication from the certificate.

**§ 187.322 Replacement certificate of title.**

(a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if no secured party is indicated in the files of the office, the owner of record may apply for and, by furnishing information satisfactory to the office, obtain a replacement certificate in the name of the owner of record.

(b) An applicant for a replacement certificate of title must sign the application, and, except as otherwise permitted by the office, the application must comply with § 187.307. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

(c) A replacement certificate of title created by the office must comply with § 187.309 and indicate on the face of the certificate that it is a replacement certificate.



(d) If a person receiving a replacement certificate of title subsequently obtains possession of the original written certificate, the person must promptly destroy the original certificate of title.

**§ 187.323 Rights of purchaser other than secured party.**

(a) A buyer in ordinary course of business has the protections afforded by State law even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

(b) Except as otherwise provided in §§ 187.317 and 187.324, the rights of a purchaser of a vessel who is not a buyer in ordinary course of business or a lien creditor are governed by State law.

**§ 187.324 Rights of secured party.**

(a) Subject to paragraph (b) of this section, the effect of perfection and non-perfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by State law.

(b) If, while a security interest in a vessel is perfected by any method under this subpart, the office creates a certificate of title that does not indicate that the vessel is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate—

(1) A buyer of the vessel, other than a person in the business of selling or leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel; and

(2) The security interest is subordinate to a conflicting security interest in the vessel that is perfected under § 187.315 after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

**§ 187.325 Duties and operation of office.**

(a) The office must retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title.

(b) The office must retain in its files all information regarding a security interest in a vessel for at least 10 years after the office receives a termination statement regarding the security interest. The information must be accessible by the hull identification number (HIN) for the vessel and any other methods provided by the office.

(c) If a person submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, the office must send to the person an acknowledgment showing the HIN of the vessel to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the HIN and be delivered by means authorized by the office.

(d) The office must send or otherwise make available in a record the following information to any person that requests it and pays the applicable fee:

(1) Whether the files of the office indicate, as of a date and time specified by the office, but not a date earlier than 3 days before the office received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel—

(i) Identified by a HIN designated in the request;

(ii) Identified by a vessel number designated in the request; or

(iii) Owned by a person designated in the request.

(2) With respect to the vessel—

(i) The name and address of any owner as indicated in the files of the office or on the certificate of title;

(ii) The name and address of any secured party as indicated in the files of the office or on the certificate, and the effective date of the information; and

(iii) A copy of any termination statement indicated in the files of the office and the effective date of the termination statement.

(3) With respect to the vessel, a copy of any certificate of origin, secured party transfer statement, transfer-by-law statement under § 187.320, and other evidence of previous or current transfers of ownership.

(e) In responding to a request under this section, the office may provide the requested information in any medium. On request, the office must send the requested information in a record that is in keeping with State rules of evidence.

Dated: May 31, 2022.

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[FR Doc. 2022-11995 Filed: 6/3/2022 8:45 am; Publication Date: 6/6/2022]